

**THE “NEW” COINTELPRO?: NOT SO FAST...**

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## **THE “NEW” COINTELPRO?: NOT SO FAST...**

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University of Pittsburgh, 2010

Throughout the 1950's and 60's, domestic activist groups were subject to heightened levels of surveillance, infiltration, and harassment through the government's counterintelligence program (COINTELPRO). Though the program was officially disbanded nearly four decades ago, current domestic activist groups, especially environmental and animal rights activists, continue to allege that the program remains in effect to this day. Though certain similarities to the COINTELPRO-era remain, the current socio-political climate's focus on terrorism prevention and the protection of industry profits and the resulting legal, statutory and regulatory frameworks present new challenges to such activists that must be met with new solutions. This thesis will examine the origin of the activists' claim, why such an analogy is faulty, and why such a distinction is important for those involved in environmental and animal rights activism.

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>1.1</b>	<b>COINTELPRO .....</b>	<b>3</b>
<b>1.2</b>	<b>THE “GREEN SCARE” .....</b>	<b>10</b>
<b>2.0</b>	<b>THE “NEW” COINTELPRO? OR THREE NEW CHALLENGES? .....</b>	<b>12</b>
<b>2.1</b>	<b>BRINGING OUT THE “T” WORD .....</b>	<b>13</b>
<b>2.2</b>	<b>BOUGHT &amp; PAID FOR BY INDUSTRY .....</b>	<b>22</b>
<b>2.3</b>	<b>LEGISLATE, PROSECUTE, ENHANCE.....</b>	<b>29</b>
	<b>2.3.1 Legislation .....</b>	<b>29</b>
	<b>2.3.2 Sentencing Enhancements .....</b>	<b>39</b>
	<b>2.3.3 Surveillance .....</b>	<b>43</b>
<b>3.0</b>	<b>THE IMPORTANCE OF THE DISTINCTION: DOES IT REALLY MATTER?</b> <b>.....</b>	<b>50</b>
	<b>APPENDIX A .....</b>	<b>58</b>
	<b>BIBLIOGRAPHY .....</b>	<b>62</b>

## **PREFACE**

While writing I was often frustrated by the unavailability of complete and detailed information concerning both former COINTELPRO operations as well as regarding the current “Green Scare” investigations. Though limited information concerning COINTELPRO operations did become public after the program’s termination, an indeterminate amount of information about the program was classified, redacted, denied or destroyed – a fate that one can only assume also applies to the current “Green Scare” investigations. Due to the unavailability of an unknown but undoubtedly substantial amount of information and detail, this thesis is at times unable to provide more than general examples or engage in more than surface-level analysis. With this limitation in mind, I hope that this thesis can at least draw some important distinctions between the COINTELPRO-era and today which can hopefully be used as a starting point for further analysis in the future.

## **1.0 INTRODUCTION**

The government's suppression of social movements deemed subversive is not a new phenomenon nor is it unique to the situation of environmental and animal rights activists. During the 1940's and 50's, the "Red Scare" was a period of intense national anxiety concerning the supposed communism infiltration of American society during which hundreds of alleged communists were subject to intense governmental harassment and suppression. After the constitutionality of certain aspects of the "Red Scare" were scrutinized and questioned by the Supreme Court leading to their eventual discontinuance, the National Security Council approved COINTELPRO (Counter Intelligence Program), a sweeping governmental program to meant to "expose, disrupt, misdirect, or otherwise neutralize" domestic social movements including communists, socialists, anti-war activists, and black nationalists, in 1956. Since COINTELPRO utilized primarily undercover methods of disruption, the program's viability relied on its secretive nature so when its paper trail began to surface in 1971, the program was quickly and officially disbanded. However, despite the program's official termination, debate as to whether or not the program was discontinued in practice continues.

In a not-so-subtle reference to the "Red Scare," modern day environmental and animal rights activists have popularized a new term, the "Green Scare," referring to the legislative, legal, and extralegal actions by the government which are fueled and supported by industry groups against all aspects of their movements. Beginning in the late 1990's and continuing today,

environmental and animal rights activists have been subject to increased governmental attention in the form of multiple congressional hearings, enactment of legislation specifically targeting their movements, prosecutions on the basis of arguable first amendment activity, application of domestic terrorism enhancements at sentencing for property crimes, and press releases and conferences labeling such activists as the nation's number one domestic terrorism threat. These efforts have been fueled and supported by industry groups who write model legislation granting their industries special protection under the law, lobby for the passage of such legislation, as well as publish their own press releases and advertisements portraying environmental and animal rights activists as terrorists. Due to this heightened governmental targeting of environmental and animal rights activists exacerbated by industry groups, one common theme running throughout activists' analysis of the "Green Scare" has been the allegation of continuing COINTELPRO tactics being used against their movement. While there are numerous avenues worthy of exploration and analysis regarding the "Green Scare," this thesis solely focuses on the origin of activists' claims of and comparisons with COINTELPRO, why such an analogy is faulty or incomplete, and why such a distinction is important for those involved in environmental and animal rights activism.

On environmental and animal rights activists' claim's most basic level, they do have a point. Viewing COINTELPRO as one distinct phase in the country's much broader continuum of the governmental suppression of social movements, the current targeting of the environmental and animal rights movement certainly deserves mention as a continuation of this historical trend. However, three differences between the past targeting of social movements and the current targeting of environmental and animal rights activists have emerged. First, environmental and animal rights activists are repeatedly portrayed as terrorists or "eco-terrorists" by the



government, the mainstream media, and industry groups. Second, industry groups have emerged as driving forces behind the targeting of environmental and animal rights activists. Third, a heightened reliance is placed on prosecutions through the legal system utilizing targeted legislation and the application of domestic terrorism enhancement statutes at sentencing.

Awareness of these significant distinctions between the past targeting of social movements during the COINTELPRO-era and the current targeting of the environmental and animal rights movements is important for today's activists in order to protect themselves and their movements while also remaining effective as activists. Unlike the secretive and illegal operations in the past, current targeting of environmental and animal rights activists is largely conducted in public view through the legal system. In this respect, current activists cannot rely on the exposure of their targeting to lead to its discontinuance. Furthermore, rather than being tightly controlled by one governmental department, the current targeting of environmental and animal rights activists is largely driven by industry groups who are not accountable to the public. As such, current activists cannot as effectively employ their own political leverage to impact the creation of legislation and policy that affects their movements.

## **1.1 COINTELPRO**

In 1956, the National Security Council approved COINTELPRO (Counter Intelligence Program)<sup>1</sup> in order to “neutralize” communists that the Federal Bureau of Investigations (FBI) could no longer prosecute after the constitutionality of the Smith Act and the Subversive

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<sup>1</sup> Federal Bureau of Investigations, *The FBI: A Centennial History, 1908-2008*, <http://www.fbi.gov/fbihistorybook.htm#chapter4> (hereinafter FBI History).

Activities Control Board hearings were questioned by Supreme Court rulings.<sup>2</sup> Though COINTELPRO was originally designed to "increase factionalism, cause disruption and win defections" inside the Communist Party-USA, it was soon expanded to include the Socialist Workers Party in 1961, White Hate Groups in 1964, Black Nationalists in 1967, and the "New Left" in 1968.<sup>3</sup> Though covert operations have been employed throughout FBI history, COINTELPRO formally refers to the governmental intelligence operations conducted between 1956 and 1971.<sup>4</sup> These were the first governmental intelligence operations to be both broadly targeted and centrally directed<sup>5</sup> though at the time neither Congress nor the Justice Department had developed specific guidelines or regulations for intelligence activities.<sup>6</sup> Though final authority rested with the FBI Headquarters in Washington, D.C., local field offices were pressured to step up their activity and coordinate with local police and prosecutors as well as required to submit regular progress reports.<sup>7</sup>

Under COINTELPRO, the FBI headquarters instructed its field offices to propose schemes to "expose, disrupt, misdirect, or otherwise neutralize" specific individuals and groups.<sup>8</sup> Due to the "nature of this new endeavor," agents were informed that "under no circumstances should the existence of the program be known outside the Bureau" and that "appropriate within-office security should be afforded to sensitive operations and techniques."<sup>9</sup> According to

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<sup>2</sup> HOWARD BALL, *THE USA PATRIOT ACT: A REFERENCE HANDBOOK* (CONTEMPORARY WORLD ISSUES) 226 (ABC-CLIO, Inc. 2004).

<sup>3</sup> The Public Eye, FBI COINTELPRO Operations, <http://www.publiceye.org/liberty/Feds/cointelpro.html>.

<sup>4</sup> Brian Glick, *Preface* to WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DOMESTIC DISSENT* xii (South End Press 2002) (1990) [hereinafter Glick, *Preface*].

<sup>5</sup> Glick, *Preface*.

<sup>6</sup> FBI History (stating that guidelines were not developed until 1976).

<sup>7</sup> Glick, *Preface*.

<sup>8</sup> Letter from FBI Director to All Field Offices (August 25, 1967), in BRIAN GLICK, *THE WAR AT HOME* 77 (South End Press 1999) (hereinafter "FBI Letter, 8/25/67")

<sup>9</sup> *Id.*

attorney Brian Glick in his book, *The War at Home*, the FBI employed four main methods to neutralize socio-political movements during COINTELPRO operations: 1) infiltration, 2) psychological warfare from the outside, 3) harassment through the legal system, and 4) extralegal force & violence.<sup>10</sup>

Infiltration of groups involved more than merely spying, the main purpose of undercover agents was to discredit and disrupt activists and groups.<sup>11</sup> This was accomplished by the undercover agents very presence as it undermined trust within the group and deterred potential supporters from joining.<sup>12</sup> The FBI also utilized external psychological warfare to undermine activists such as planting false media stories and forged leaflets in the name of targeted groups, spreading misinformation about meetings and events, setting up pseudo-groups run by the government, and manipulating employers, land lords, and other officials to harass activists.<sup>13</sup> The legal system was also used to harass activists, including the use of perjured testimony and fabricated evidence as a pretext for false arrests and wrongful imprisonment, discriminatory enforcement of laws and other governmental regulations, the use extensive surveillance, investigative interviews, and grand jury subpoenas to intimidate activists and silence their supporters.<sup>14</sup> Extralegal force and violation in the form of break-ins, vandalism, assaults, and beatings were also threatened, instigated, and conducted by agents in an attempt to frighten activists and their supporters.<sup>15</sup>

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<sup>10</sup> BRIAN GLICK, *THE WAR AT HOME* 10 (South End Press 1989).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Between COINTELPRO's origin in 1956 and its termination in 1971, FBI Headquarters alone developed over 500,000 domestic intelligence files on Americans and domestic groups.<sup>16</sup> The FBI also eventually acknowledged having conducted 2,218 separate COINTELPRO actions from mid-1956 through mid-1974.<sup>17</sup> These operations were undertaken in conjunction with 2,305 warrantless telephone taps, 697 buggings, and the opening of 57,846 pieces of mail.<sup>18</sup> However, these admissions were incomplete as counterintelligence campaigns against some groups and whole categories of operational techniques were omitted from reporting requirements.<sup>19</sup>

The first concrete evidence of COINTELPRO surfaced in March 1971 when the "Citizen's Committee to Investigate the FBI" broke into an FBI field office in Media, PA and removed hundreds of documents.<sup>20</sup> Following the break-in copies of some of the stolen documents dealing with the Bureau's surveillance of student groups were then anonymously forwarded to members of the press and politicians, including Columnist Tom Wicker of the New York Times, the Washington Post, the Los Angeles Times, South Dakota Senator George McGovern and Maryland Congressman Parren Mitchell.<sup>21</sup> Though Attorney General John M. Mitchell requested that the press refrain from publishing any of the documents citing that disclosure could "endanger the lives" of people involved in investigations on behalf of the United

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<sup>16</sup> SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS, BOOK II: INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS 6 (1976) (hereinafter CHURCH COMMITTEE, BOOK II).

<sup>17</sup> WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DOMESTIC DISSENT 303 (South End Press 2002) (1990).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Ripping Off the F.B.I.*, TIME, Apr. 5, 1971, available at <http://www.time.com/time/magazine/article/0,9171,876894,00.html>.

<sup>21</sup> *Id.*

States, the Washington Post was the first news outlet to break the story on March 24, 1971.<sup>22</sup> The New York Times and the Los Angeles Times soon followed publishing descriptions of as well as excerpts from the documents.<sup>23</sup> Following these leaks, more files were obtained through a strengthened Freedom of Information Act while at the same time former agents began to distance themselves from their work at the FBI and publically speak out about its activities.<sup>24</sup> These exposures lead to congressional investigations whose hearings published voluminous reports enabling even more documents to be available through Freedom of information Aact requests and lawsuits.<sup>25</sup>

When COINTELPRO's paper trail surfaced, its compromising of the program's secrecy set into motion a process of high level "re-evaluation" of the program's viability.<sup>26</sup> In response to these leaks, Charles D. Brennan, second in command in the COINTELPRO administrative hierarchy, issued a memorandum to FBI Assistant Director William C. Sullivan recommending that the program be disbanded in order "to afford additional security to our sensitive techniques and operations."<sup>27</sup> Though Brennan's memorandum described COINTELPRO as "successful over the years," it recommended the program's discontinuance strictly due to "security reasons" while still reserving the Bureau's right to continue to engage in COINTELPRO activities on a case-by-case basis "with tight procedures to insure absolute secrecy."<sup>28</sup> The following day, April

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<sup>22</sup> Allan M. Jalon, *A Break-In to End All Break-Ins*, L.A. TIMES, Mar. 8, 2006, <http://articles.latimes.com/2006/mar/08/opinion/oe-jalon8>.

<sup>23</sup> *Id.*

<sup>24</sup> Glick, *Preface* at xi.

<sup>25</sup> *Id.*

<sup>26</sup> CHURCH COMMITTEE, BOOK II.

<sup>27</sup> Letter from Mr. C. D. Brennan to Mr. W. C. Sullivan (April 27, 1971), in NELSON BLACKSTOCK, COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM 30 (Pathfinder Press 1999) (1975) [hereinafter Brennan Letter, 4/27/1972].

<sup>28</sup> *Id.*

28, 1971, FBI Director J. Edgar Hoover formally terminated COINTELPRO.<sup>29</sup> As part of its public relations cover-up and campaign to build “a new FBI,” the FBI publically apologized for COINTELPRO,<sup>30</sup> the new Attorney General notified several activists that they had been victims of the program, and a handful of top FBI officials were indicted for ordering break-ins of activists’ homes and offices leading to two convictions and several resignations and retirements.<sup>31</sup>

Following the program’s termination in 1974, the Senate held hearings to investigate COINTELPRO and other intelligence agency abuses leading to the production of an extensive series of reports entitled "Intelligence Activities and the Rights of Americans" by the Senate Select Committee to Study Government Operations with Respect to Intelligence Activities, commonly referred to as the Church Committee.<sup>32</sup> The Church Committee’s report found that COINTELPRO engaged in other actions "which had no conceivable rational relationship to either national security or violent activity” and that “the unexpressed major premise of much of COINTELPRO is that the Bureau has a role in maintaining the existing social order, and that its efforts should be aimed toward combating those who threaten that order.”<sup>33</sup> The Church Committee’s report further "compel[ed] the conclusion that Federal law enforcement officers looked upon themselves as guardians of the status quo” and gave examples of violations of the

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<sup>29</sup> Letter from Mr. W. C. Sullivan to FBI Field Offices (April 28, 1971), in NELSON BLACKSTOCK, COINTELPRO: THE FBI’S SECRET WAR ON POLITICAL FREEDOM 31 (Pathfinder Press 1999) (1975).

<sup>30</sup> Federal Bureau of Investigations, Editorial, *Enough is Enough*, N.Y. TIMES, Oct. 10, 1975, in NELSON BLACKSTOCK, COINTELPRO: THE FBI’S SECRET WAR ON POLITICAL FREEDOM 200 (Pathfinder Press 1999) (1975).

<sup>31</sup> NELSON BLACKSTOCK, COINTELPRO: THE FBI’S SECRET WAR ON POLITICAL FREEDOM 19 (Pathfinder Press 1999) (1975).

<sup>32</sup> CHURCH COMMITTEE, BOOK II.

<sup>33</sup> *Id.*

right of free speech and association where the FBI targeted individuals and organizations simply because they were critical of government policy.<sup>34</sup>

The Church Committee's report in regards to COINTELPRO was based on a staff study of more than 20,000 pages of Bureau documents and included depositions of many of the Bureau agents involved in the programs.<sup>35</sup> However, the FBI's motivation for cooperating in these investigations was that neither the FBI nor any of its agents would suffer any negative consequences as a result of the investigation.<sup>36</sup> Though the Peterson Committee, an investigative committee headed by Assistant Attorney General Henry Peterson, only reviewed FBI summary reports and never saw any raw files, their 1974 Justice Department report on COINTELPRO recommended against prosecuting any of the Bureau personnel involved.<sup>37</sup> Instead the Peterson Committee declared that decisions on prosecution should take into account several factors such as: 1) "the historical context in which the programs were conceived and executed by the Bureau in response to public and even Congressional demands for action to neutralize the self-proclaimed revolutionary aims and violence prone activities of extremist groups which posed a threat to the peace and tranquility of our cities in the mid and late sixties," 2) "the fact that each of the COINTELPRO programs were personally approved and supported by the late Director of the FBI," and 3) "the fact that the interference with First Amendment rights resulting from individual implemented program actions were insubstantial."<sup>38</sup> In the end, the Director of the FBI made clear that he saw nothing particularly serious in the revelations of the various

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Paul Wolf, Presentations to the U.N. High Commissioner for Human Rights Mary Robinson at the World Conference Against Racism, COINTELPRO: The Untold American Story (September 1, 2001), *available at* <http://www.icdc.com/~paulwolf/cointelpro/coinwcar3.htm> (hereinafter Wolf, COINTELPRO: Untold American Story).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

investigatory committees. And even the head of the Civil Rights Division, J. Stanley Pottinger, reported to the Attorney General that he had found "no basis for criminal charges against any particular individuals involving particular incidents."<sup>39</sup>

## 1.2 THE "GREEN SCARE"

Referencing the "Red Scare" of the past, the "Green Scare" is a term popularized by environmental and animal rights activists in response to their branding as "eco-terrorists" which refers to government's recent legislative, legal, and extralegal crackdowns against their movements.<sup>40</sup> On the legislative front, environmental and animal rights activists are specifically targeted by statutes such as the Animal Enterprise Protection Act and its successor the Animal Enterprise Terrorism Act that impose heightened penalties for nonviolent interference with the operations of an animal enterprise.<sup>41</sup> On the legal front, environmental and animal rights activists are prosecuted under such legislation and subject to domestic terrorism enhancement statutes leading to disproportionate sentences up to four times higher than otherwise warranted.<sup>42</sup> On the extralegal front, environmental and animal rights activists are the subject of public relations and media campaigns that paint them as terrorists in mediums ranging from full-page ads in major newspapers to movie plots and romance novels.<sup>43</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> Will Potter, *What Is The Green Scare?*, "GREENISTHENEWR.COM, Sept. 1, 2008), <http://www.greenisthenewred.com/blog/green-scare/>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*



Like other social movements throughout history, those involved in the environmental and animal rights movements are not homogenous in their philosophies or actions and, therefore, the broad environmental and animal rights movements include both legal and illegal elements.<sup>44</sup> Some activists work strictly within the law leafleting and lobbying for change while other activists protest and engage in non-violence civil disobedience and home demonstration protests.<sup>45</sup> Other more radical activists, such as the Animal Liberation Front and Earth Liberation Front, engage in illegal activity such as vandalism, arson, and raids of research facilities or fur farms to release animals.<sup>46</sup>

However, environmental and animal rights activists at all levels have felt the effects of what they now refer to as the “Green Scare.” At one extreme, those activists engaging in unquestionably illegal activity such as arsons and raids are prosecuted under targeted terrorism legislation providing enhanced penalties based solely on the target of their action and its threat to industry profits. When targeted legislation is not available, domestic terrorism sentencing enhancement guidelines are employed which can up to quadruple the length of the imprisonment based solely on the action’s social or political motive, not its potential threat to human or nonhuman life. In the middle, those engaging in nonviolent civil disobedience or protests are also often prosecuted under targeted legislation based their targets’ “reasonable fear” of their actions regardless of the activists’ actual intent or harm caused. At the other end of the spectrum, even those engaged in purely above ground reform-oriented efforts are subject to smear campaigns linking them to more radical activists and organizations and branded as sympathetic to terrorists if not “farm teams” for terrorists themselves.

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

## 2.0 THE “NEW” COINTELPRO? OR THREE NEW CHALLENGES?

One common theme running throughout commentators’ analysis of the “Green Scare” has been the allegation of continuing COINTELPRO tactics being used against environmental and animal rights activists.<sup>47</sup> However, utilizing Glick’s framework points to several departures in the experiences of the activists of the 1950’s and 60’s and the environmental and animal rights activists of today. The use of external psychological warfare has evolved from the secretive planting of false information to the very public portrayal of environmental and animal rights activists as terrorists in a variety of mediums ranging from governmental press conferences to television show plots. While harassment through the legal system and infiltration are still employed to target today’s environmental and animal rights activists, these tactics have evolved from undercover extralegal or illegal methods to public prosecutions under existing legislation and surveillance methods which are explicitly authorized by statute. In a similar vein, the threat or use of extralegal physical force and violence has been replaced with the threat of prosecution

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<sup>47</sup> See, e.g., Ben Rosenberg, *The “Case” Against Ron Coronado: A Legal Memo on the Green Scare*, EARTH FIRST! JOURNAL, May/June 2006, available at <http://westgatehouse.com/art223.html> [hereinafter Rosenberg, *The “Case” Against Ron Coronado*]; Press Release, Civil Liberties Defense Center, U.S. Court of Appeals for the Eighth Circuit Declines to Release 20 Year Old Carrie Feldman, Jailed For More Than Two Months On Contempt of Grand Jury, Jan. 29, 2010, available at <http://www.voiceofthevoiceless.org/the-hidden-agenda-behind-the-iowa-alf-investigation>; Ben Rosenberg, *Ten Humble Suggestions for Radicals Living in a Police State*, FAULTLINES, Spring 2007, available at <http://cldc.org/pdf/10%20Suggestions.pdf>; CrimethInc Ex-Workers’ Collective, *Green Scared?: Preliminary Lessons from the Green Scare*, ROLLING THUNDER, Spring 2008, AT 26, available at <http://www.crimethinc.com/texts/rollingthunder/greenscared.php> [hereinafter CrimethInc, *Green Scared?*].

under targeted legislation and the application of domestic terrorism sentencing enhancements leading to the stigma of a terrorism charge and long terms of imprisonment.

Though some broad themes from the COINTELPRO-era remain, the current socio-political climate's emphasis on the prevention of terrorism and the protection of industry profits and the resulting legal, statutory and regulatory frameworks concerning governmental targeting of current environmental and animal rights activists is not simply analogous to the past COINTELPRO targeting of several former domestic activist groups. There are three major distinctions between the government's COINTELPRO program of the past and the targeting of the environmental and animal rights movements of today: the repeated portrayal of such activists' as terrorists or "eco-terrorists," the inclusion of industry groups as driving forces behind the movements' suppression, and a heightened emphasis on prosecutions through targeted legislation and the application of domestic terrorism sentencing enhancements. These three factors are different sides of the same coin; by painting environmental and animal rights activists as terrorists, industry groups are able to more successfully lobby for targeted legislation shielding their industries from economic disruption.

## **2.1 BRINGING OUT THE "T" WORD**

One distinction between the targeting of current environmental and animal rights activists and the social movements of the 1950's and 60's has been the repeated use of the term "terrorist" or more specially "eco-terrorist" to describe those involved in the environmental and animal rights movements. Though this labeling is similar to activists of the past being labeled as communists in order to discredit them in the eyes of the public, the term communist invokes an un- or anti-

American image of an individual who seeks to undermine the American government and economic structure while the term terrorist invokes the more threatening image of an individual who uses human life as leverage to accomplish his or her political goals. This public portrayal of environmental and animal rights activists as terrorists by the government, industry groups, and mainstream media alike has played a huge role in the legitimatizing of the legislative and legal targeting of such activists and movements in the eyes of the public. By framing the actions of environmental and animal rights activists as terrorism in a society still reeling from the September 11th attacks on the World Trade Center, the government controls the parameters of the debate by defining activists into a corner. This is because in today's socio-political climate the framing of environmental and animal rights activists as terrorists is arguably an automatic trump card to be utilized by the government to justify measures that would be deemed excessive if employed against "non-terrorists."

The framing of environmental and animal rights activists as terrorists is made easier due to the lack of a universally accepted definition of terrorism despite its intense emotive effect.<sup>48</sup> This lack of a definition has led some scholars to state that the term is "commonly used as a term of abuse, not [as an] accurate description."<sup>49</sup> Scholars have further argued that when the term is defined, its definition relies heavily on the vested interests of those in the position to do the defining<sup>50</sup> and that the term has been "defined, redefined, and redefined [] to accommodate personal preferences regarding what should or should not be label terroristic."<sup>51</sup> Due to the

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<sup>48</sup> Steven Best & Anthony Nocella, II, *Appendix 3: Defining Terrorism, in TERRORISTS OR FREEDOM FIGHTERS? REFLECTIONS ON THE LIBERATION OF ANIMALS* 361, 369-76 (Steven Best & Anthony Nocella, II eds., Latern Bks. 2004).

<sup>49</sup> Interview by Sabahattin Atas with Noam Chomsky, Prof. Linguistics & Phil., Mass Inst. Tech. (Sept. 2003), available at <http://www.chomsky.info/interviews/200309--.htm> [hereinafter Chomksy interview].

<sup>50</sup> *Id.*

<sup>51</sup> Brent L. Smith, *Terrorism in America: Pipe Bombs and Pipe Dreams* 5 (S.U.N.Y. Press, New Directions in Crime and Justice Studies Series, 1994).

flexibility of the term, the “agent of the crime, not its character” commonly determines the distinction between terroristic acts and non-terroristic acts.<sup>52</sup>

Even the U.S. government employs several definitions of the term terrorism. The United States Law Code defines terrorism as “premeditated, political motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents”<sup>53</sup> while the United States Federal Criminal Code defines it as “...activities that involve violent... or life-threatening acts... that are a violation of the criminal laws of the United States or of any State and... appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping....”<sup>54</sup> The United States Code of Federal Regulations defines terrorism as “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”<sup>55</sup> The USA PATRIOT Act defines terroristic activities as “activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the U.S. or of any state, that (B) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping, and (C) occur primarily within the territorial jurisdiction of the U.S.”<sup>56</sup> The Federal Bureau of Investigations defines an act of terrorism as “a violent act or an act dangerous to human life, in

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<sup>52</sup> Chomsky interview.

<sup>53</sup> 22 U.S.C. § 2656(d).

<sup>54</sup> 18 U.S.C. §2331.

<sup>55</sup> 28 C.F.R. § 0.85.

<sup>56</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. No. 107-56 § 802 (2001).

violation of the criminal laws of the U.S., or of any state, to intimidate or a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."<sup>57</sup>

When an act's social or political purpose is related to environmental or animal welfare concerns that act is referred to as "eco-terrorism." Eco-terrorism is defined by the United States Federal Bureau of Investigation's Domestic Terrorism Section as "the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally-oriented, subnational group for environmental-political reasons, or aimed at an audience beyond the target, often of a symbolic nature."<sup>58</sup> Ron Arnold of the Center for the Defense of Free Enterprise, a public relations firm employed by the government,<sup>59</sup> first used this term in a 1983 article for Reason Magazine.<sup>60</sup> This article defined eco-terrorism as a "crime committed to save nature."<sup>61</sup>

Senator James McClure first used the term eco-terrorism in Congress during congressional testimony on the Anti-Drug Abuse Act of 1988.<sup>62</sup> Though the part of the bill being discussed concerned the criminalization of dangerous booby traps on public lands set to protect drug crops by harming humans, McClure warned the Senate that "ecoterrorists" with a different agenda were using methods on the public lands "just as dangerous and deadly as the drug

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<sup>57</sup> COUNTERTERRORISM THREAT ASSESSMENT & WARNING UNIT OF THE FBI, THIRTY YEARS OF TERRORISM: A SPECIAL REPORT, TERRORISM IN THE UNITED STATES ii (1999), *available at* <http://www.fbi.gov/publications/terror/terror99.pdf>.

<sup>58</sup> *Eco-Terrorism & Lawlessness in National Forests: Oversight Hearing Before the Subcomm. Forest & Forest Health of the H.R. Comm. on Res.*, 107th Cong. 48 (2002) (statement of James F. Jarboe, Domestic Terrorism Section Chief, FBI Counterterrorism Div.) [hereinafter 2002 Congressional Hearing].

<sup>59</sup> *The Birth of a Buzz-Word: Eco-Terrorism*, THE INDEPENDENT, Sept. 17, 2007, <http://www.independent.org/2007/09/15/the-birth-of-a-buzz-word-eco-terrorism/>.

<sup>60</sup> Ron Arnold, *Eco-terrorism*, REASON, Feb. 1983, at 31.

<sup>61</sup> *Acts of Ecoterrorism by Radical Environmental Organizations, Hearing Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 105th Cong. 62 (1998) (statement of Ron Arnold, Ctr. for the Def. of Free Enter.) [hereinafter 1998 Congressional Hearing].

<sup>62</sup> 134 Cong. Rec. 30,810-12 (1988).

producers.”<sup>63</sup> McClure entered into the record two editorials from Spokane, Washington newspapers, one editorial stating that those in the logging industry view environmental rights activists “accurately, as terrorists”<sup>64</sup> and another editorial referring to a gathering of environmental rights activists as a “terrorist encampment.”<sup>65</sup> Shortly thereafter, Congress enacted 18 U.S.C. § 1864 criminalizing the use of a hazardous or injurious device on federal land with the intent to obstruct or harass the harvesting of timber.<sup>66</sup> This statute penalized conduct with fines and up to a year in prison even when such conduct did not endanger life or even damage any property; for conduct damaging any property or any injury to the body, including bruises and cuts, the statute carries a sentence of up to twenty years in prison.<sup>67</sup>

The term eco-terrorism first appeared in a law review article in 1995 encouraging the use of organized crime laws against environmental rights activists and comparing such activists with abortion protestors who commit murder.<sup>68</sup> Shortly thereafter the first congressional hearing on eco-terrorism, “Acts of Ecoterrorism by Radical Environmental Organizations,” was convened in June 1998.<sup>69</sup> During opening remarks, Chairman Representative Bill McCollum stated that “in the name of protecting Mother Nature, radical environmentalists generate nothing but terror” and that “there have already been many victims of radical environmental attacks.”<sup>70</sup> The next congressional hearing, this time on “Eco-terrorism and Lawlessness on National Forests,” was

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<sup>63</sup> *Id.*

<sup>64</sup> Editorial, *They’re Terrorists, Not Environmentalists*, SPOKANE-REV., July 7, 1988.

<sup>65</sup> Ann Japenga, *Earth First! Comes out of the Shadows – Environmental Commandos Teach Monkey-Wrenching*, SPOKANE-REV., July 4, 1988.

<sup>66</sup> 18 U.S.C. § 1864.

<sup>67</sup> *Id.*

<sup>68</sup> William W. Cason, *Spiking the Spikers: The Use of Civil RICO Against Environmental Terrorists*, 32 HOUS. L. REV. 745 (1995).

<sup>69</sup> 1998 Congressional Hearing.

<sup>70</sup> *Id.* (statement of Rep. Bill McCollum, Chairman).

held in February 2002.<sup>71</sup> During this hearing, James F. Jarboe, the Domestic Terrorism Section Chief of the FBI Counterterrorism Division, listed underground environmental and animal rights activists as the FBI's top priority in domestic terrorism.<sup>72</sup> During testimony it was made clear that the FBI considers a threat to use violence against an inanimate object to be a terroristic act if it is environmentally motivated regardless if property damage ever materializes though "violence" was left undefined.<sup>73</sup>

On May 18, 2005, Congress held yet another hearing on "eco-terrorism" entitled "Eco-terrorism Specifically Examining the Earth Liberation Front and the Animal Liberation Front."<sup>74</sup> At this hearing, John Lewis, Deputy Assistant Director of the FBI, testified that environmental rights activists were "[o]ne of today's most serious domestic terrorism threats" and recommending expanding existing legislation<sup>75</sup> while Senator James Inhofe compared such activists to Al Qaeda.<sup>76</sup> A second hearing on "Ecoterrorism" that year was held on October 26, 2005 focusing on the Stop Huntington Animal Cruelty campaign.<sup>77</sup> During testimony, Barry M. Sabin, Chief of the Counterterrorism Section of the Department of Justice, recommended redrafting current legislation to include the offense of "economic disruption" rather than the stricter standard of "economic damage."<sup>78</sup>

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<sup>71</sup> 2002 Congressional Hearing.

<sup>72</sup> *Id.* (statement of James F. Jarboe, Domestic Terrorism Section Chief, FBI Counterterrorism Div.).

<sup>73</sup> *Id.*

<sup>74</sup> *Eco-terrorism Specifically Examining the Earth Liberation Front and the Animal Liberation Front: Hearing Before the S. Comm. on Environment and Public Works*, 109th Cong. (2005) [hereinafter May 2005 Congressional Hearing].

<sup>75</sup> May 2005 Congressional Hearing (statement of John Lewis, FBI Deputy Director).

<sup>76</sup> May 2005 Congressional Hearing (statement of Sen. James Inhofe).

<sup>77</sup> *Eco-terrorism: Hearing Before the S. Comm. on Environment and Public Works*, 109th Cong. (2005) [hereinafter October 2005 Congressional Hearing].

<sup>78</sup> October 2005 Congressional Hearing (statement of Barry Sabin, Chief of the Counterterrorism Sec., Dept. of Justice).



By the end of 2003, twenty-six of FBI's fifty-six field offices had pending investigations associated with environmental and animal rights activities<sup>79</sup> and by 2005 the FBI considered "[t]he No. 1 domestic terrorism threat [to be] the eco-terrorism, animal-rights movement."<sup>80</sup> Despite their own admission that animal rights activists have taken no lives,<sup>81</sup> the Federal Bureau of Investigations have labeled environmental and animal rights activists the "one of today's most serious domestic terrorism threats."<sup>82</sup> The Department of Justice and the Department of Homeland Security have also adopted this view and branded such activists the nation's "most serious domestic terror threat."<sup>83</sup>

In addition to the government's branding of environmental and animal rights activists as terrorists, this sentiment has been echoed, encouraged, and reinforced by the mainstream media. Mainstream movie plots have revolved around eco-terrorists who unleash more than animals in cages including deadly viruses that wipe out five billion people (*Twelve Monkeys*, 1995)<sup>84</sup> or armies of the undead (*28 Days Later*, 2003).<sup>85</sup> This depiction of environmental and animal rights activists as posing a threat to human safety was reinforced in a 2006 Law & Order episode

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<sup>79</sup>2002 Congressional Hearing (statement of James F. Jarboe, Domestic Terrorism Section Chief, FBI Counterterrorism Div.).

<sup>80</sup> Henry Schuster, *Domestic Terror: Who's most dangerous?*, CNN, Aug. 24, 2005, <http://www.cnn.com/2005/US/08/24/schuster.column/>.

<sup>81</sup> FBI, *When Talk Turns to Terror: Homegrown Extremism in the U.S.*, May 23, 2005, <http://www.fbi.gov/page2/may05/jlewis052305.htm> ("...[w]hile these terrorists haven't taken lives..."); Terry Frieden, *FBI, ATF Address Domestic Terrorism: Officials: Extremists Pose Serious Threat*, CNN, May 19, 2005, <http://www.cnn.com/2005/US/05/19/domestic.terrorism/index.html> ("No deaths have been blamed on attacks by [animal rights groups]"); May 2005 Congressional Hearing (statement of John Lewis, FBI Deputy Director) ("Most animal rights ... extremists have refrained from violence targeting human life..."); *Id.* (statement of Sen. John Inhofe) ("Experts agree that [animal rights groups] have not killed anyone to date...").

<sup>82</sup> May 2005 Congressional Hearing (statement of John Lewis, FBI Deputy Director).

<sup>83</sup> *Id.* (statement of John Inhofe, U.S. Senator).

<sup>84</sup> *Twelve Monkeys* (Universal Pictures 1995) (plot summary available at <http://www.imdb.com/title/tt0114746/plotsummary>).

<sup>85</sup> *28 Days Later* (Fox Searchlight Pictures 2003) (plot summary available at <http://www.imdb.com/title/tt0289043/plotsummary>).

centering around the rape of a federal informant by eco-terrorists.<sup>86</sup> Environmental and animal rights activists have also been depicted as terrorists in comic books about the seduction of teenage girls into eco-terrorism<sup>87</sup> and romance novels about an undercover agent's "regretted night of passion" with her target.<sup>88</sup> In August 2003, Cox & Forkum, ran a political cartoon depicting two men in "ELF" t-shirts spray painting an SUV while talking about watching 9/11 videos later<sup>89</sup> and in March 2008 Eric Devericks of The Seattle Times published a political cartoon comparing the ELF to Al Qaeda with the caption "the ends justify the means."<sup>90</sup> Even celebrities such as Anthony Bourdain, a celebrity chef, have stated that vegetarians "are the worst kind of terrorists [...] [a]nd they must be stopped."<sup>91</sup>

Despite the government and the mass media's best efforts to paint environmental and animal activists as terrorists, the label still doesn't seem to fit. While the more radical strains of environmental and animal rights activists do engage in illegal activity ranging from raids of laboratories and arson, even the FBI admits that even the most hardcore "eco-terrorists" have taken no lives.<sup>92</sup> Furthermore, even the most radical environmental and animal rights organizations, such as the Earth Liberation Front and the Animal Liberation Front, have guidelines prohibiting the endangering of life, both human and non-human, and place a heavy emphasis on taking all "necessary precautions against harming any animal, human and non-

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<sup>86</sup> *Law & Order Special Victims Unit: Informed* (NBC television broadcast Sept. 19, 2006) (plot summary available at <http://www.tv.com/law-and-order-special-victims-unit/informed/episode/866776/recap.html>).

<sup>87</sup> Ashley MacQuarrie, *CCI XTRA: Minx Announces 2008 Releases*, COMIC BOOK RESOURCE, Aug. 2, 2007, available at <http://www.comicbookresources.com/?page=article&id=11074>.

<sup>88</sup> Lynne Romaine, *LEAVE NO TRACE* (Wings ePress 2005) (description available at <http://www.lynnromaine.com/Leavenotrace.html>).

<sup>89</sup> *Polluted Minds*, CORKANDFORKUM.COM August 26, 2003, [http://www.coxandforkum.com/archives/2003\\_08.html](http://www.coxandforkum.com/archives/2003_08.html). See Appendix A.

<sup>90</sup> Eric Devericks, Editorial, *E.L.F. Members Are Terrorists*, THE SEATTLE TIMES, March 3, 2008, [http://blog.seattletimes.nwsource.com/antagonisticink/2008/03/elf\\_members\\_are\\_terrorists.html](http://blog.seattletimes.nwsource.com/antagonisticink/2008/03/elf_members_are_terrorists.html). See Appendix A.

<sup>91</sup> Joshua Valocchi, *Chef Off and Die*, THE PHILADELPHIA WEEKLY, Nov. 27, 2007, [http://www.philadelphiaweekly.com/food/chef\\_off\\_and\\_die-38462639.html](http://www.philadelphiaweekly.com/food/chef_off_and_die-38462639.html).

<sup>92</sup> *Supra* note 81.

human.”<sup>93</sup> Indeed, the only death resulting from a radical environmental or animal rights action has been that of an environmental rights activist who was crushed to death by a felled tree while protesting the logging of old growth forests.<sup>94</sup>

In this vein, Senator Frank Lautenberg stated during congressional testimony that the government should be careful about whom it referred to as terrorists and that “so-called ecoterrorism” has never resulted in a single death while pointing to the loss of life caused by a wide range of other domestic terroristic threats such as the KKK and abortion protestors.<sup>95</sup> These concerns were echoed by then-Senator Barack Obama who also submitted a statement stating that Americans should “[not] think that the threat from these organizations is equivalent to other crimes faced by Americans every day” and urged the Senate Subcommittee on the Environment and Public Works to redirect their attention to larger environmentally-based threats, such as the levels of lead found in children’s blood.<sup>96</sup> These concerns were re-emphasized by Senator James Jeffords who cautioned “i[n] our current state of fear, it is easy to get headlines by using the term ‘terrorism.’ But, sometimes, a criminal is just a criminal.”<sup>97</sup>

Despite these warnings, the circle of what environmental and animal rights activists and organizations qualify as terrorists keeps widening. Once the most radical edges of the environmental and animal rights movements, those who commit property crimes such as the Earth Liberation Front and the Animal Liberation Front, were branded as terrorists, the label slowly began expanding to include activists engaged in nonviolent civil disobedience such as home demonstrations. Now the circle is widening again to brand those who associate in any way

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<sup>93</sup> Earth Liberation Front, EARTH LIBERATION FRONT GUIDELINES in IGNITING A REVOLUTION: VOICES IN DEFENSE OF THE EARTH app. 407 (Steven Best & Anthony J. Nocella II eds., 2006),

<sup>94</sup> Yvonne Daley, *In California, Cause of Saving Redwoods Gaining*, Boston Globe, Nov. 8, 1998, at A18.

<sup>95</sup> May 2005 Congressional Hearing (statement of Sen. Frank Lautenberg)

<sup>96</sup> May 2005 Congressional Hearing (statement of Sen. Barack Obama).

<sup>97</sup> October 2005 Congressional Hearing (statement of James M. Jeffords)

with the first two groups as terrorist sympathizers or associates if not terrorists themselves. Even reform-based animal advocacy organizations such as People for the Ethical Treatment of Animals have been criticized for “consorting with terrorists” for simply attending conferences with more radical activists also in attendance and have even been labeled “farm teams for ecoterrorism” themselves.<sup>98</sup> Along these lines, a threat analysis commissioned by the Society for Toxicology in 2008 warned that though the Northwest Animal Rights Network (NARN) does not conduct “direct action attacks or other illegal activities,” “it is possible that there is cross-over between the membership of NARN with more radical organizations.”<sup>99</sup> In an effort to prove association with alleged terrorists, the Center for Consumer Freedom took out a full-page ad in the New York Times in December 2008 attempting to link the Humane Society USA to animal rights terrorism via a flow-chart of the crossover between various animal rights groups.<sup>100</sup>

## **2.2 BOUGHT & PAID FOR BY INDUSTRY**

Another shift in the experiences of animal and environment rights activists from COINTELPRO-targets is the appearance of industry groups as driving forces behind their movements’ suppression. While those targeted by COINTELPRO were done so due to their potential threat to the socio-political status quo, those involved with the environmental and animal rights

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<sup>98</sup> Press Release, Center for Consumer Freedom, Animal Protection Groups Welcome Terrorism to DC Conference, July 27, 2007, [http://www.consumerfreedom.com/pressRelease\\_detail.cfm/r/206-animal-protection-groups-welcome-terrorism-to-dc-conference](http://www.consumerfreedom.com/pressRelease_detail.cfm/r/206-animal-protection-groups-welcome-terrorism-to-dc-conference).

<sup>99</sup> Will Potter, *Corporations Track Who Activists Are Dating*, GREENISTHENEWRED.COM, June 28, 2008, <http://www.greenisthenewred.com/blog/corporations-tracking-who-activists-are-dating/440/> [hereinafter Potter, *Corporations Track Who Activists Are Dating*].

<sup>100</sup> Press Release, Center for Consumer Freedom, New York Times Ad Condemns Humane Society of the United States for Terror Funding, Dec. 11, 2008, [http://www.consumerfreedom.com/pressRelease\\_detail.cfm/r/244-new-york-times-ad-condemns-humane-society-of-the-united-states-for-terror-fundraising](http://www.consumerfreedom.com/pressRelease_detail.cfm/r/244-new-york-times-ad-condemns-humane-society-of-the-united-states-for-terror-fundraising).

movements seem to be targeted due to their threat to industry profits. As such, industry groups, who are not accountable to the public, have positioned themselves as the driving forces behind legislation targeting environmental and animal rights activists and engaged in their own public relations and media campaigns to paint such activists as terrorists.

The appearance of industry groups as the driving forces behind the creation of legislation targeting of environmental and animal rights activists as well as their branding as terrorists makes sense. To date, not even the most radical actions taken in the name of the environment or animals have harmed a single human being.<sup>101</sup> What the more radical groups have done, however, is commit more than 1,200 criminal acts causing more than \$100 million in damage according to the FBI.<sup>102</sup> Along these lines, the Department of Homeland Security's bulletin to law enforcement agencies warns that "[a]ttacks against corporations by animal rights extremists and eco-terrorists are costly to the targeted company and, over time, can undermine confidence in the economy" and goes on to warn against activities such as flyer distribution and protests never once mentioning any activities dangerous to life.<sup>103</sup> This sentiment was echoed in presentation given by the Overseas Security Advisory Council warning corporations that "[a]lthough incidents related to terrorism are most likely to make the front-page news, animal rights extremism is what's most likely to affect your day-to-day business operations."<sup>104</sup>

Even the term "eco-terrorism" was created by a representative of the Center for the Defense of Free Enterprise, Ron Arnold, who also coined the term "wise use," a movement

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<sup>101</sup> *Supra* note 81.

<sup>102</sup> Press Release, Fed. Bureau of Investigation, Eco-Terror Indictments: "Operation Backfire" Nets 11, (Jan. 20, 2006), *available at* <http://www.fbi.gov/page2/jan06/elf012006.htm>.

<sup>103</sup> Memorandum from the Dept. of Homeland Sec. Office of Intelligence & Analysis on Preventing Attacks by Animal Rights Extremists and Eco-Terrorists: Fundamentals of Corporate Security (Apr. 13, 2006), *available at* <http://www.greenisthenewred.com/blog/wp-content/Images/Other/DHSflyermemo1.htm>.

<sup>104</sup> Presentation by the Overseas Advisory Council on Animal Rights Extremists: Targets, Tactics, Business Response & Countermeasures, *available at* <http://www.greenisthenewred.com/blog/state-department-powerpoint-corporations/560/>.

which advocates opening federally protected wilderness area such as old growth forests and national parks to commercial development, mining, and logging<sup>105</sup> and whose goal is “to destroy environmentalists by taking their money and their members.”<sup>106</sup> Arnold later went on to become a self-identified “eco-terrorism expert,” testify before a Senate Subcommittee Hearing on ecoterrorism,<sup>107</sup> receive a \$340,000 grant from the University of Arkansas Terrorism Research Center,<sup>108</sup> and write a book titled “Ecoterror: The Violent Agenda to Save Nature – The World of a Unabomber.”<sup>109</sup> Arnold’s Center for the Defense for Free Enterprise maintains a page on “ecoterrorism”<sup>110</sup> as well as an “Ecoterror Response Network” charged with gathering “evidence, information and tips concerning crimes committed in the name of saving nature and relays them to the appropriate law enforcement agency.”<sup>111</sup>

In addition to coining the term, industry groups have also drafted and lobbied for ecoterrorism legislation. The primary piece of legislation targeting animal rights activists, the Animal Enterprise Terrorism Act (AETA), was based on model legislation from the American Legislative Exchange Council (ALEC), a group of conservative state legislators and private sector policy advocates<sup>112</sup> However, despite their primary role, ALEC did not act alone in pushing through its model legislation which was heavily backed and lobbied for by biomedical and agri-business industry groups.<sup>113</sup> The most significant backer of the legislation was the

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<sup>105</sup> Adam Pertman, *Wise Use Foot Soliders on the March*, BOSTON GLOBE, Oct. 3, 1994.

<sup>106</sup> *Id.*

<sup>107</sup> 1998 Congressional Hearing (statement of Ron Arnold, Ctr. for the Def. of Free Enter.).

<sup>108</sup> Bill Berkowitz, *Terrorist Tree Huggers: Ron Arnold, Father of the ‘Wise Use’ Movement, Sets His Sights on ‘Eco-Terrorists’*, WORKING ASSETS, July 7, 2004, <http://www.commondreams.org/views04/0707-12.htm>.

<sup>109</sup> RON ARNOLD, *ECOTERROR: THE VIOLENT AGENDA TO SAVE NATURE : THE WORLD OF THE UNABOMBER* (Free Enter. Press 1997).

<sup>110</sup> Center for the Defense of Free Enterprise, *EcoTerrorism*, <http://www.cdfe.org/ecoterror.htm>

<sup>111</sup> Center for the Defense of Free Enterprise, *EcoTerror Response Network*, <http://www.cdef.org/ern..htm>

<sup>112</sup> Kimberly E. McCoy, *Subverting Justice: An Indictment of the Animal Enterprise Terrorism Act*, 14 ANIMAL L. 53, 58-59 (2007).

<sup>113</sup> *Id.*

Animal Enterprise Protection Coalition, founded by the National Association of Biomedical Researchers (NABR) for the sole purpose of passing this legislation and comprised of a multitude of animal enterprise industries, including furriers, ranchers, hunters, biomedical researchers, rodeos, circuses, and pharmaceutical companies such as Pfizer, Wyeth, GlaxoSmithKline, the Fur Commission and National Cattlemen's Beef Association.<sup>114</sup> All of the involved industry groups and the corporations comprising them had a vested financial interest in the passage of the legislation, which criminalizes any activity resulting in the loss of economic profits even when no other crime is committed, as industries whose profits stood to be afforded unprecedented special protection.<sup>115</sup> While it is logical for industries to act to protect their own interests, it is important to remember that unlike elected officials and the government, industry groups are not accountable to the public and thus their influence on legislation should be carefully monitored.

While the American Legislative Exchange Council's website describes the association as nonpartisan, *USA Today* has recently described ALEC as a "national group that represents 2,000 conservative state legislators."<sup>116</sup> The group is one of the most powerful corporate lobbies, especially at the state level, whose members include over one-third of the state's lawmakers and over three hundred corporations.<sup>117</sup> ALEC is funded largely by corporations, industry groups, and conservative foundations who pay up to \$50,000 a year in a tax deductible donation in membership dues and its current and past members have included Philip Morris, Amoco,

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> David Cauchon, *Stimulus Plan Would Give States \$200 Billion*, USA TODAY, Jan. 27, 2007, available at [http://www.usatoday.com/news/washington/2009-01-26-stimulus\\_N.htm](http://www.usatoday.com/news/washington/2009-01-26-stimulus_N.htm).

<sup>117</sup> Karen Olsson, *Ghostwriting the Law*, 27 MOTHER JONES 17 (Sept. 2002), available at <http://motherjones.com/politics/2002/09/ghostwriting-law>.

Chevron, and Enron.<sup>118</sup>

ALEC is comprised of nine task forces, each composed of legislators as well as private industry representatives and chaired by one representative from both the public and private sector.<sup>119</sup> Each task force, primarily through its private sector representatives, drafts numerous pieces of “model legislation” on a variety of subjects within its policy domain.<sup>120</sup> These pieces of model legislation are then given to the task force’s public sector members and introduced in individual state legislatures.<sup>121</sup> Though corporate interests have traditionally engaged in lobbying and advocacy pushing for individual legislative measures, ALEC’s model legislation is unique due to the lack of evidence that the introduced legislation was in any way shaped by the private sector.<sup>122</sup> ALEC has been extremely successful in pushing its model legislation through state legislatures; according to its Legislative Scorecard for the most recent legislative session (2009), 826 bills based on ALEC model legislation were introduced and 115 of these were enacted yielding a significant 14% success rate.<sup>123</sup>

In 2003, ALEC’s Criminal Justice and Homeland Security task force, which is now referred to as Public Safety and Elections task force, published the Animal & Ecological Terrorism Act (“ALEC Model Act”)<sup>124</sup> to criminalize any act that “obstructs” or “impedes” use of an animal facility or natural resource<sup>125</sup> through property damage or fear as well as any lodging, publicity, and financial or other support given to an activist deemed to be “obstructing”

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Am. Legislative Exch. Council, 2010 Legislative Scorecard, [http://www.alec.org/AM/Template.cfm?Section=2010\\_Legislative\\_Scorecard](http://www.alec.org/AM/Template.cfm?Section=2010_Legislative_Scorecard).

<sup>124</sup> AM. LEGISLATIVE EXCH. COUNCIL, MODEL ANIMAL & ECOLOGICAL TERRORISM ACT, *in* ANIMAL & ECOLOGICAL TERRORISM IN AMERICA app. A (2003), *available at* [http://www.greenisthenewred.com/blog/wp-content/images/alec\\_animal\\_ecological\\_terrorism\\_bill.pdf](http://www.greenisthenewred.com/blog/wp-content/images/alec_animal_ecological_terrorism_bill.pdf) [hereinafter “Model Act”].

<sup>125</sup> *Id.*



or "impeding" the use of an animal or natural resource.<sup>126</sup> The ALEC Model Act further suggests creating a terrorist registry requiring offenders to register with the Attorney General's Office who would then be charged with maintaining a public website containing the convict's photograph, name, address, and signature for a minimum of three years at which point the convict could petition to be removed.<sup>127</sup> ALEC claimed that the Model Act was necessary due to the "overly narrow[ness]" of existing legislation and because the USA PATRIOT Act could "rarely be used [within the realm of ecoterrorism] because the federal definition of terrorism requires the death of or harm to people, an element not characteristic of eco-terrorists."<sup>128</sup> Following the distribution of the ALEC Model Bill to several legislators in 2004, similar bills containing nearly identical language were introduced in several states though none became law.<sup>129</sup> However, the Animal Enterprise Terrorism Act of 2006 shows significant similarities with the ALEC Model Bill concerning its broadly defining of the offense as interfering with the operations of an animal enterprise through property damage or the instilling of "reasonable fear" within the targeted industries.<sup>130</sup>

Aside from drafting and pushing for targeted legislation, industry groups have also contributed to the unofficial public relations campaign to paint environmental and animal rights activists as terrorists. Shortly before congressional votes on the Animal Enterprise Terrorism Act, the founders of the Animal Enterprise Protection Coalition, the National Association for Biomedical Research (NABR) bought a full-page ad in Roll Call, the newspaper of Capitol Hill,

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<sup>126</sup> *Id.*

<sup>127</sup> Model Act; White Paper, National Lawyers Guild, Andy Parker, *Beyond AETA: How Corporate-Crafted Legislation Brands Activists as Terrorists*, available at [http://www.nlg.org/Beyond AETA White Paper.pdf](http://www.nlg.org/Beyond_AETA_White_Paper.pdf) [hereinafter Parker, *Beyond AETA*].

<sup>128</sup> AM. LEGISLATIVE EXCH. COUNCIL, RESPONSE IN THE FEDERAL JURISDICTION, *in* ANIMAL & ECOLOGICAL TERRORISM IN AMERICA 15 (2003).

<sup>129</sup> Parker, *Beyond AETA*.

<sup>130</sup> Kimberly E. McCoy, *Subverting Justice: An Indictment of the Animal Enterprise Terrorism Act*, 14 ANIMAL L. 53, 58-59 (2007).

featuring a vandalized office with "your home is next" written on the wall in red paint.<sup>131</sup> In 2007, NABR employed similar imagery on a flyer distributed at a national biomedical conference<sup>132</sup> depicting a masked face against a blood-red background warning that "research labs and bio conventions are no longer their only targets" and cautioning readers to "be prepared."<sup>133</sup> The organization has also previously sold a similar "domestic terrorist" ads featuring masked activists brandishing axes on its' website.<sup>134</sup>

On April 30, 2006, a full-page anonymous ad ran in the New York Times praising the conviction of the SHAC7 activists.<sup>135</sup> Under a large headline proclaiming "I Control Wall Street," a depiction of a menacing figure donning a ski mask implies that the New York Stock Exchange's decision to drop Huntington Life Science, the target of SHAC's campaign, was influenced by animal rights terrorism.<sup>136</sup> Two weeks later, an identical ad ran in the Washington Post.<sup>137</sup> Another full-page ad was taken out in The New York Times on December 11, 2008 by the Center for Consumer Freedom.<sup>138</sup> This ad accuses the Humane Society of "helping an animal rights terrorism group" by way of a flow-chart linking the Humane Society to the Humane

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<sup>131</sup> Will Potter, *Industry Group Picks Up the Pace, Hopes to Rush Through "Eco-terrorism" Law*, GREENISTHENEWRED.COM, Sept. 22, 2006, <http://www.greenisthenewred.com/blog/nabr-ad-rollcall/104/>; National Association for Biomedical Research, Advertisement, ROLL CALL, available at [http://www.nabr.org/Portals/8/NABR\\_new\\_Final\\_ad.pdf](http://www.nabr.org/Portals/8/NABR_new_Final_ad.pdf). See Appendix A.

<sup>132</sup> Brian Keim, *What Do We Have to Fear From Animal Rights Extremists?*, WIRED, May 8, 2007, available at [http://www.wired.com/wiredscience/2007/05/what\\_do\\_we\\_have/](http://www.wired.com/wiredscience/2007/05/what_do_we_have/).

<sup>133</sup> National Association for Biomedical Research, Flier, 2007 (distributed at BIO Conference 2007). See Appendix A.

<sup>134</sup> Will Potter, *McCarthyism 2.0*, GREENISTHENEWRED.COM, Mar. 30, 2007, available at <http://www.greenisthenewred.com/blog/mccarthyism-20/>.

<sup>135</sup> Will Potter, *Scare-Mongers Place Anonymous Ad in New York Times*, GREENISTHENEWRED.COM, May 1, 2006, available at <http://www.greenisthenewred.com/blog/nyt-ad/33/>.

<sup>136</sup> Anonymous, Advertisement, *I Control Wall Street*, N.Y. TIMES, April 28, 2006. See Appendix A.

<sup>137</sup> Will Potter, *Animal Testing Groups Play Dumb About Big Money Ad Campaign*, GREENISTHENEWRED.COM, May 12, 2006, available at <http://www.greenisthenewred.com/blog/washpost-ad/43/>.

<sup>138</sup> Will Potter, *Full-Page New York Times Ad Calls Humane Society "Terrorists"*, GREENISTHENEWRED.COM, Dec. 11, 2008, <http://www.greenisthenewred.com/blog/full-page-new-york-times-ad-calls-humane-society-terrorists/774/>; Press Release, Ctr. for Consumer Freedom, New York Times Ad Condemns Humane Society for Terror Fundraising (Dec. 11, 2008), [http://www.consumerfreedom.com/pressRelease\\_detail.cfm/r/244-new-york-times-ad-condemns-humane-society-of-the-united-states-for-terror-fundraising](http://www.consumerfreedom.com/pressRelease_detail.cfm/r/244-new-york-times-ad-condemns-humane-society-of-the-united-states-for-terror-fundraising).

League of Philadelphia which shares members with the group “Hugs for Puppies” which shares members with “SHAC Philly” which shares members with “SHAC USA, six members of which were indicted on conspiracy to violate the AEPA.<sup>139</sup>

## **2.3      LEGISLATE, PROSECUTE, ENHANCE**

Once environmental and animal rights activists are painted as terrorists and domestic national security is expanded to include the protection of industry’s profits, such activists are then prosecuted under targeted terrorism statutes meant to protect the profits of those involved animal enterprises or subject to heavy domestic terrorism enhancements at sentencing. This increased reliance on targeted legislation and prosecutions through the legal system in order to publically target movements, rather than utilizing primarily illegal or extralegal secret means of harassment and intimidation, is another point of departure from the COINTELPRO-era.

### **2.3.1    Legislation**

After several failed attempts with similar legislation,<sup>140</sup> Congress passed the first statute targeting environmental and animal rights activists, the Animal Enterprise Protection Act (AEPA) in 1992 creating the federal crime of "animal enterprise terrorism" for anyone who travels in "interstate or foreign commerce" and "intentionally damages or causes the loss of any

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<sup>139</sup> *Id.*

<sup>140</sup> *See:* Farm Animal & Research Facilities Protection Act of 1989, H.R. 3270, 101st Cong., 1st Sess. (1989); Farm Animal & Research Facilities Protection Act of 1991, H.R. 2407, 102nd Cong., 2nd Sess. (1991), Animal Rights Terrorism Act of 1992 (House Bill 2407 RH).

property used by the animal enterprise, or conspires to do so.”<sup>141</sup> The AEPA also spelled out sentencing guidelines for violations: less than \$10,000 in damages meant fines and/or six months in prison, causing more than \$10,000 in damages meant fines and/or three years in prison, causing “serious bodily injury” meant fines and/or 20 years in prison, and causing human death meant fines and/or a sentence of “life or for any term of years.”<sup>142</sup> When the law passed, some environmental, animal, and civil rights groups cautioned that the AEPA’s vague “loss of any property” language could open the floodgates to prosecution of non-violent activists engaging in activities such as boycotts, protests or pickets. However, for nearly six years nothing happened and during the AEPA’s fourteen-year history, it was only successfully employed on two occasions.

In 1998, the law was first used to do what it was arguably meant to do, convict animal rights activists engaging in property damage. Under the AEPA, Justin Samuel and Peter Young were indicted for releasing mink from Wisconsin fur farms in 1997.<sup>143</sup> Samuel was apprehended in Belgium in 1999 and subsequently extradited back to the United States for trial.<sup>144</sup> In return for agreeing to cooperate with the government, he was sentenced to a reduced two years imprisonment and fined over \$360,000.<sup>145</sup> Young remained underground for seven years before apprehension in 2005 and sentenced to two years in prison, 360 hours of community to service “to benefit humans and no other species,” one year’s probation and fined over \$250,000 in restitution.<sup>146</sup>

The only other successful prosecution under the AEPA came in 2006 with the conspiracy

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<sup>141</sup> Animal Enterprise Protection Act of 1992, Pub. L. No. 102-346, 106 Stat. 928 (amending 18 U.S.C. § 43) [hereinafter AEPA].

<sup>142</sup> *Id.*

<sup>143</sup> Support Peter, <http://www.supportpeter.com/background.htm>.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

convictions of six Stop Huntington Animal Cruelty (SHAC) activists.<sup>147</sup> Unlike Samuel and Young, these six activists were not accused of engaging in property damage, the activists were indicted for running a website containing information and news about the campaign to shut down the Huntington Life Sciences (HLS), an animal testing lab.<sup>148</sup> The SHAC campaign, which has no formal membership and is based solely on individuals' private actions, to shut down HLS focused on targeting those who made HLS's activities financially possible from the banks that held HLS's loans to the stockbrokers of traded HLS's shares and managed to bring the company to the verge of economic collapse.<sup>149</sup> The SHAC website served as a clearinghouse for all information related to how businesses operate from investors, pink sheets, and market markers as well as all contained reports of all actions related to the campaign, both legal and illegal, ranging from protests and vigils to phone and email blockades to rescuing animals and breaking windows.<sup>150</sup>

Though none of the six defendants were ever accused of any of the crimes reported on the website,<sup>151</sup> the government argued that by reporting the protest activity on the website the defendants incited others to engage in various acts, including vandalism, and that by reporting on the protest activity after the fact, the website was threatening to those at which the protests were directed.<sup>152</sup> In March 2006, the defendants were convicted, sentenced to an aggregate of 24 years in prison, and ordered to pay a joint restitution of \$1,000,001.00.<sup>153</sup> Based on his designation as a

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<sup>147</sup> Will Potter, *Green is the New Red: How the Bush Administration Is Using Terror Laws to Prosecute Nonviolent Environmental Activists*, COUNTERPUNCH, May 04, 2006, available at <http://counterpunch.org/potter05042006.html> [hereinafter Potter, *Green Is the New Red*].

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> May 2005 Congressional Hearing (testimony of John Lewis, Director of FBI) ("...when these companies or individuals are threatened or attacked, it is not necessarily the work of SHAC itself.").

<sup>152</sup> Potter, *Green Is the New Red*.

<sup>153</sup> Shac 7 Support Page, <http://www.shac7.com> (last visited April 17, 2008).

terrorist under the AEPA, one of the SHAC7 defendants, Andy Stephanian, was housed in a Communications Management Unit at Terre Haute, a new federal prison facility that restricts inmates' access to other inmates and ability to communicate with the outside world, based on his "affiliat[ion] with a domestic terrorist organization" and his ties to such groups.<sup>154</sup>

Though the AEPA was sufficient to do what it was arguably meant to do, convict underground animal rights activists who engage in property damage, and was broad enough to sustain the convictions of six activists for doing no more than running a website, the legislation's scope was widened even further with the passage of Animal Enterprise Terrorism Act ("AETA").<sup>155</sup> The AETA was passed by unanimous consent<sup>156</sup> in the Senate in September 2006<sup>157</sup> and approved by a voice vote<sup>158</sup> in the House of Representatives under a suspension of the rules, a practice reserved for "non-controversial legislation,"<sup>159</sup> with only six members present in November 2006.<sup>160</sup> President Bush signed the bill into law on November 27, 2006.<sup>161</sup>

The AETA substantially broadens the legislation's scope in several main ways: by expanding the scope of the offenses, by including protections for tertiary targets, and by

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<sup>154</sup> Amy Goodman, *Exclusive: Animal Rights Activist Jailed at Secretive Prison Gives First Account of Life Inside a "CMU,"* DEMOCRACYNOW! June 25, 2008, [http://www.democracynow.org/2009/6/25/exclusive\\_animal\\_rights\\_activist\\_jailed\\_at](http://www.democracynow.org/2009/6/25/exclusive_animal_rights_activist_jailed_at) [hereinafter Democracy Now!, *Inside a "CMU"*]

<sup>155</sup> 152 Cong. Rec. S. 9253 (2006).

<sup>156</sup> United States Senate Glossary, Unanimous Consent,

[http://www.senate.gov/reference/glossary\\_term/unanimous\\_consent.htm](http://www.senate.gov/reference/glossary_term/unanimous_consent.htm)

("Unanimous consent: A Senator may request unanimous consent on the floor to set aside a specified rule of procedure so as to expedite proceedings. If no Senator objects, the Senate permits the action, but if any one Senator objects, the request is rejected. Unanimous consent requests with only immediate effects are routinely granted, but ones affecting the floor schedule, the conditions of considering a bill or other business, or the rights of other Senators, are normally not offered, or a floor leader will object to it, until all Senators concerned have had an opportunity to inform the leaders that they find it acceptable.")

<sup>157</sup> 152 Cong. Rec. S. 10793 (2006).

<sup>158</sup> United States Senate Glossary, Voice Vote, [http://www.senate.gov/reference/glossary\\_term/voice\\_vote.htm](http://www.senate.gov/reference/glossary_term/voice_vote.htm)

("Voice vote: A vote in which the Presiding Officer states the question, then asks those in favor and against to say "Yea" or "Nay," respectively, and announces the result according to his or her judgment. The names or numbers of Senators voting on each side are not recorded.")

<sup>159</sup> <http://www.senate.gov/reference/resources/pdf/RL30945.pdf>-

<sup>160</sup> 152 Cong. Rec. H. 8590 (2006).

<sup>161</sup> 152 Cong. Rec. D. 1127 (2006).

penalizing even conduct that does not inflict either economic or physical damage.<sup>162</sup> The AETA switches the AEPA's standard from one who travels in interstate or foreign commerce for the purpose of "causing physical disruption to the functioning" of an animal enterprise to one merely having the purpose of "damaging or interfering" with its operations, a switch which substantially widens the scope of what types of activities might be covered by the act.<sup>163</sup> While both phrases are vague, causing physical disruption to the functioning of a business invokes a much stronger and more violent image than simply damaging or interfering with its operations, which could potentially encompass nonviolent civil disobedience or even legal activities such as boycotts and pickets.<sup>164</sup>

The expanded legislation also broadens the offense section to include anyone who "intentionally places a person in *reasonable fear* of the death of, or serious bodily injury to that person..."<sup>165</sup> The bill's language criminalizing any conduct "intentionally placing a person in reasonable fear of [death or bodily injury]" opens the gates for the criminalization of a wide range of behavior such as distributing flyers, protesting, or nonviolent civil disobedience that sometimes may have the effect of placing those targeted in "fear" of those protesting or flyering – not through the activists' own behavior but as a result of government and industry groups' campaigns to paint such activists as terrorists. As even those environmental and animal rights activists who engage in illegal actions, such as lab or farm raids, arson, and vandalism, have

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<sup>162</sup> Animal Enterprise Terrorism Act, 109 P.L. 374, 120 Stat. 2652, (amending 18 U.S.C. § 43) [hereinafter AETA].

<sup>163</sup> AETA.

<sup>164</sup> *Animal Enterprise Terrorism Act: Hearing on H.R. 4239 Before the Subcomm. on Crime, Terrorism & Homeland Sec. of the H. Comm. on the Judiciary*, 109th Cong. 12 (2005) (statement of Robert Scott, Ranking Member, Subcomm. on Crime, Terrorism & Homeland Sec.), available at [http://commdocs.house.gov/committees/judiciary/hju27742.000/hju27742\\_0.htm](http://commdocs.house.gov/committees/judiciary/hju27742.000/hju27742_0.htm) [hereinafter 2005 Congressional Hearing on the AETA].

<sup>165</sup> *Id.*

never harmed a human or nonhuman life,<sup>166</sup> the source of the “fear” cannot be construed as coming from the activists’ activities themselves. Instead, the fear stems from the previously discussed long-time multi-faceted unofficial public relations campaign by industry and coalition groups such as the National Biomedical Research Association and the Center for Consumer Freedom.

Supports of expanding the legislation’s scope also pushed for the protection of "tertiary targets," or third parties doing business with animal enterprise, claiming that their exclusion created a loophole in the original legislation for animal rights activists to exploit.<sup>167</sup> This argument was made despite the fact that the AEPA was already used to charge the six SHAC activists with that exact offence – campaigning to shut down Huntington Life Sciences by targeting those who do business with them.<sup>168</sup> Through the original legislation was broad enough to sustain the SHAC convictions, the new legislation expanded the original target from one who "intentionally damages or causes the loss of any property (including animals or records) used by the animal enterprise, or conspires to do so" to explicitly include tertiary targets by tacking on "or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise."<sup>169</sup>

Perhaps the most significant expansion of the legislation is the addition of penalties including fines and up to eighteen months imprisonment for acts causing no economic damage or bodily injury even when the offense does not instill in its targets a reasonable fear of bodily

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<sup>166</sup> *Supra* note 83.

<sup>167</sup> 2005 Congressional Hearing on the AETA (statement of Brent McIntosh, Deputy Assistant Attorney Gen., U.S. Dept. of Justice) ("...the existing statute's focus on physical disruption of the actual animal enterprise permits the argument that it does not cover a campaign that harms the animal enterprise, not directly, but by targeting persons and entities that do business with an animal enterprise").

<sup>168</sup> Will Potter, *Analysis of the Animal Enterprise Terrorism Act*, GREENISTHENEWR.COM, July 2007, available at <http://www.greenisthenewred.com/blog/aeta-analysis-109th/> [hereinafter Potter, *AETA Analysis*].

<sup>169</sup> AETA.



injury or death.<sup>170</sup> Like the “reasonable fear” provision, this provision drastically broadens the number of environmental and animal rights activists that can be prosecuted under the legislation and potentially encompasses even activists engaging in conduct and speech arguably protected by the First Amendment such as home demonstrations and protests. Though the AETA contains language exempting activities protect by the First Amendment, by defining the offense broadly and not requiring the infliction of damages, injuries, or even the fear of such, the legislation further paves the way for grey-area conduct to be considered outside the protections of the First Amendment and subject to penalization under a terrorism statute. This fear is at least somewhat validated by the convictions of six SHAC activists under the earlier version of the legislation as well as the current indictments of four California activists under the revised legislation, both groups of which were never accused of anything more than engaging in speech related activities.

The AETA has been employed three times thus far though all prosecutions are still ongoing. The Act’s first application came in February 2008 when the Joint Terrorism Task Force of the FBI arrested four animal rights activists (AETA 4) for conspiracy to commit a violation of the Act.<sup>171</sup> Much like the SHAC 7’s convictions, the AETA 4’s charges stemmed from arguable First Amendment activity – in this case, activities such as protesting, chalking the sidewalk, chanting and leafleting.<sup>172</sup> In May 2009, the defendants filed a motion to dismiss the charges against them based on their argument that Animal Enterprise Terrorism Act is facially unconstitutional as an overly broad prohibition on speech.<sup>173</sup> This motion was denied in October 2009.<sup>174</sup> The defendants are currently awaiting trial and each face 5-10 year sentences.<sup>175</sup>

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<sup>170</sup> AETA.

<sup>171</sup> Support the AETA 4!, <http://www.aeta4.org>.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

The AETA's second use came a year later in March 2009 when William Viehl and Alex Hall were arrested by the Joint Terrorism Task Force of the FBI and subsequently indicted by a grand jury for suspicion of a raid at a South Jordan, UT, mink farm in August of 2008 as well as suspicion of an attempted raid at a second mink farm in October of 2008.<sup>176</sup> Viehl entered into a non-cooperating plea agreement admitting involvement in the South Jordan raid including the release of up to 650 mink and spray-painting animal rights slogans in exchange for the prosecution's recommendation of a six-month sentence and a dismissal of the second charge for the attempted raid.<sup>177</sup> However, despite the recommendation by the prosecutor, Judge Benson, referred to Viehl as a "terrorist" and sentenced him to two years imprisonment, three years probation, and nearly \$66,000 in restitution due to the "amount of threat and terror" that Viehl's non-violent actions caused.<sup>178</sup> Viehl's co-defendant, Alex Hall, is awaiting trial.<sup>179</sup>

The third and final application of the Act came in October and November 2009 when Carrie Feldman and Scott DeMuth were subpoenaed to a federal grand jury in Iowa investigating animal rights vandalism from 2004 when Feldman was just 15 years old and DeMuth was 17.<sup>180</sup> Both Feldman and DeMuth were taken into custody on a civil contempt of court charges for refusing to cooperate with grand jury proceedings.<sup>181</sup> Shortly thereafter, DeMuth, a University of Minnesota graduate student conducting research on the animal rights movement, was indicted for conspiracy under the Animal Enterprise Terrorism Act though the statute under which he was charged, the AETA, did not exist at the time of his alleged conduct.<sup>182</sup> In response to the court's

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<sup>175</sup> *Id.*

<sup>176</sup> Support BJ & Alex, <http://www.supportbjandalex.com>.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Support Carrie & Scott!, <http://www.davenportgrandjury.wordpress.com>.

<sup>182</sup> *Id.*

release of DeMuth pending trial, the government filed an emergency motion to keep him in custody citing that DeMuth was a “domestic terrorist” based on his “writings, literature and conduct.”<sup>183</sup> Feldman was released after four months due to her testimony “no longer being needed” while DeMuth remains under house arrest pending trial.<sup>184</sup>

Though both versions of the statute were ostensibly enacted to target the more radical environmental and animal rights activists who commit illegal acts such as arson, vandalism, trespass, and theft of property, these aforementioned cases illustrate that the majority of prosecutions under both versions of the statutes were based on conduct arguably protected by the First Amendment such as running websites or attending a demonstrations against those who have never even been accused of engaging in potentially violent or even potentially destructive acts. In its thirteen-year history, the Animal Enterprise Protection Act was only used in two instances resulting in eight prosecutions, only one instance of which involved even acts of nonviolent property damage. Though the AETA has thus far brought more prosecutions than its predecessor, it has still barely even scratched the surface of the more than 1,200 criminal incidents that more radical environmental and animal rights activists have claimed since 1990<sup>185</sup> and has also so far primarily focused on prosecuting speech-related activity.

Frustrated by the lack of convictions under the statutes, industry groups have begun advocating for the inclusion of the death penalty and expansion of the law's definition of terrorism to include acts such "pies in the face," claiming that harassment and character defamation were "worse and far more dangerous to society than a simple punch in the nose" and even going so far as to say that congressmen and women sympathetic to the cause of animal

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<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> May 2005 Congressional Hearing (statement of John Lewis, FBI Deputy Director).

rights were aiding and abetting terrorism.<sup>186</sup> Following the convictions of the SHAC activists, industry groups boasted that such prosecutions were "just the starting gun" and that the government should now go after more mainstream groups such as People for the Ethical Treatment of Animals and the Humane Society of the United States calling such groups the "farm teams for the eco-terror problem."<sup>187</sup> While industry groups continue to push for ever expanding legislation, it is unlikely that any amount of enhanced legislation will deter the more radical environmental and animal rights activists engaging in property damage who continue to claim responsibility for a variety of criminal acts<sup>188</sup> and continue to act while fully understanding the illegality and consequences of their actions.<sup>189</sup> Such activists are already aware that, even without specialty targeted legislation, their actions are illegal and, thus, by committing such activists, they are putting themselves at risk for prosecution and imprisonment.

What the expanding legislation does accomplish however is of chilling aboveground environmental and animal rights activism. Though the threat of additional penalties may not deter more extreme underground environmental and animal rights activists, the same cannot be assumed for more mainstream activists who do not aim to commit criminal acts and are not willing to risk arrest. The prosecutions of the SHAC7 and the AETA4 for speech-related activities are likely to give such activists pause when writing their own statements or deciding whether or not to attend demonstrations. While only six activists have been prosecuted for such

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<sup>186</sup> Edward J. Walsh, *The Animal Enterprise Terrorism Act: A Scientist's Perspective Brings the Law Into Focus*, LAB ANIMAL, February 2000, available at <http://www.naiaonline.org/articles/archives/animalenterprise.htm>.

<sup>187</sup> Thomas Walkom, *U.S. Terror Hunt Targets Animal Activists*, TORONTO STAR, March 13, 2006, available at <http://www.supportkevin.com/terror-hunt.html>.

<sup>188</sup> *Id.*

<sup>189</sup> See: *Animal Rights Activists Trial To Start*, FOX NEWS, available at <http://www.foxnews.com/story/0,2933,156687,00.html> ("...[s]upporters [of Peter Young] claim they mounted a raid on an Illinois fur farm in his honor."); Anonymous Communiqué, *23 Rabbits Liberated From Massachusetts Laboratory*, ANIMAL LIBERATION PRESS OFFICE, SEPT. 19, 2006, available at [http://animalliberationpressoffice.org/communiques/2006-09-19\\_capralogics\\_shac7.htm](http://animalliberationpressoffice.org/communiques/2006-09-19_capralogics_shac7.htm) ("In honor of the SHAC 7, 23 rabbits have been liberated...")

activities with another four currently awaiting trial, the chilling effect is likely to be much more expansive as an unknown but possible substantive amount of activists have watered down their message and scaled back their activities in order to steer clear of the threat of their own prosecutions.

### **2.3.2 Sentencing Enhancements**

When targeted legislation is not available, such as for those offenses not involving animal enterprises, environmental and animal rights activists are still targeted through the legal system. This is most often accomplished through the application of domestic terrorism enhancement statutes. In addition to adding the stigma of a terrorism charge to the court proceedings, application of the federal sentencing guidelines' terrorism enhancement can lead to the addition of twenty years imprisonment, which in some cases up to quadruple prison time, for felony offenses "that involved, or was intended to promote, a federal crime of terrorism."<sup>190</sup> For example, a single offense of arson with the application of a terrorism enhancement carries a sentence of 33-41 months (2 to 4 years); with the application of the enhancement, the sentence for the same act jumps to 168-210 months (14 to 15 years).<sup>191</sup>

In order for a crime to qualify as a "federal crime of terrorism," the offense must be "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct" and include one out of a list of an enumerated list of

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<sup>190</sup> United States Sentencing Guidelines Manual §3A1.4.

<sup>191</sup> Rebecca K. Smith, "Ecoterrorism"?: A Critical Analysis of the Vilification of Radical Environmental Activists as Terrorists, 38 ENVTL. L. 537 (2008).

offenses, nearly all of which involve a risk to human life or the destruction of federal property.<sup>192</sup> However, the enumerated offenses also include arson generally including “whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.”<sup>193</sup> However, even without the finding of a federal crime of terrorism, the Court can still depart upward under the terrorism enhancement guidelines in cases where the offense was “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated.”<sup>194</sup> An upward departure is also endorsed when the offense is a federal crime of terrorism intended to coerce a civilian population.<sup>195</sup>

Though the destruction of property offenses claimed by or attributed to environmental and animal rights activists usually include solely private or corporate property, prosecutors frequently recommend application of the terrorism enhancement at sentencing. The most commonly cited proof of environmental and animal rights activists intention to “influence or affect the conduct of government” is through their communiqués, short anonymous writings claiming responsibilities for actions and explaining the reasons and ideologies behind them.<sup>196</sup> However, such communiqués often show a clear intention to target businesses and corporations such as private developers, geneticists, or other individuals or businesses involved in what

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<sup>192</sup> Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §702, 110 Stat. 1214, 1303 (1996), codified as 18 U.S.C. § 2332b(g)(5).

<sup>193</sup> *Id.*; 18 U.S.C. § 884(i).

<sup>194</sup> U.S.S.G. § 3A1.4

<sup>195</sup> U.S.S.G. §3A1.4 cmt. n.1.

<sup>196</sup> Will Potter, Government Seeks “*Terrorism Enhancement*” for Environmental Activists, GREENISTHENEWRED.COM, May 11, 2007, available at <http://www.greenisthenewred.com/blog/terrorism-enhancement-hearing/235/>.

activists feel are destructive to the environment or animals.<sup>197</sup> Often these communiqués explicitly express that the action was untaken due the actors’ lack of faith that the government could be influenced to stop its destructive behavior or harm of nonhuman life leading the actor to act directly to stop such behavior.<sup>198</sup>

The first major eco-terrorism prosecutions occurred in 2004 when the FBI merged seven independent investigations from its Oregon field offices into a multi-agency criminal investigation referred to as “Operation Backfire” in what became one of the largest roundups of environmental and animal liberation activists in American history.<sup>199</sup> Beginning in December 7 2005, the FBI, with assistance from the Bureau of Alcohol, Tobacco, and Firearms, arrested eleven people throughout the Pacific Northwest for allegedly taking part in a wide variety of actions attributed by the U.S. government to the Earth Liberation Front (ELF) and the Animal Liberation Front (ALF) during the mid- to late 1990’s.<sup>200</sup> In January 2006, federal prosecutors and US Attorney General Alberto Gonzales announced a sweeping 65 count indictment, including various charges of conspiracy, arson, attempted arson, and using and carrying a destructive device, relating to 17 different incidents in Oregon, Washington, Wyoming, Colorado and California.<sup>201</sup> These actions constituted nearly all of the unsolved environmental and animal liberation actions in the Pacific Northwest, many of whose statute of limitations were set to expire. Following this indictment, Attorney General Alberto Gonzales and the director of the FBI held a press conference stating that these individuals were among the highest domestic terrorism

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<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Press Release, United States Dept. of Justice, Eleven Defendants Indicted on Domestic Terrorism Charges (Jan. 20, 2006), available at [http://www.usdoj.gov/opa/pr/2006/January/06\\_crm\\_030.html](http://www.usdoj.gov/opa/pr/2006/January/06_crm_030.html).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

priorities in the nation<sup>202</sup> while FBI spokesman David Picard told news crews that “one of our major domestic terrorism programs is the ALF, ELF, and anarchist movement, and it’s a national program for the FBI.”<sup>203</sup>

“Operation Backfire” was the first time in the history of the US that the government sought this enhancement for property crimes that were not intended to and did not result in any injury or threat of injury to humans.<sup>204</sup> Despite arguments against the application of the sentencing of defense lawyers, Judge Aiken ruled in May 2007 that the terrorism enhancement was generally applicable and that a federal crime of terrorism does not require a substantial risk of injury.<sup>205</sup> Of the ten sentenced “Operation Backfire” defendants, the terrorism enhancement was applied in seven cases despite the crimes’ carrying from 310 to 1155 years imprisonment before application of the enhancement.<sup>206</sup> Like Andy Stephanian of the SHAC 7, one of the “Operation Backfire” defendants, Daniel McGowan, is currently housed in a Communications Management Unit a Terre Haute, a new federal prison facility that restricts inmates’ access to other inmates and ability to communicate with the outside world, based on his “affiliat[ion] with a domestic terrorist organization” and his ties to such groups.<sup>207</sup>

The second major eco-terrorism prosecution occurred in January 2006 when Eric McDavid, Zachary Jenson and Lauren Weiner were charged with “conspiracy to damage and destroy property by fire and an explosive” stemming from an alleged conspiracy to sabotage a U.S. Forest Service genetics tree lab and the Nimbus Dam, actions which were never carried

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<sup>202</sup> *Id.*

<sup>203</sup> Rosenburgh, *The “Case” Against Ron Coronado*.

<sup>204</sup> Democracy Now!, *Inside a “CMU.”*

<sup>205</sup> *Id.*

<sup>206</sup> CrimethInc, *Green Scared?*

<sup>207</sup> Democracy Now!, *Inside a “CMU.”*



out.<sup>208</sup> Despite having no prior criminal history or history of violence, McDavid was denied bail twice and spent nearly two years pre-trial in “total separation,” or solitary confinement, at Sacramento County Main Jail.<sup>209</sup> Under threat of a twenty-year sentence, both of Eric's co-defendants plead guilty to a lesser charge and agreed to cooperate with the prosecution and testify against McDavid.<sup>210</sup> In May 2008, McDavid was sentenced to 19 years and 7 months imprisonment after application of the terrorism enhancement statute, which was at the time the longest standing sentence of any environmental rights prisoner in the United States.<sup>211</sup> Judge England justified application of the terrorism enhancement by saying “[i]t’s a new world since September 11, 2001.”<sup>212</sup>

### 2.3.3 Surveillance

Another distinction between the COINTELPRO-era and today is that many of the extralegal or illegal surveillance tactics employed by the FBI in the 1950’s and 60’s have since been regulated or legalized. Since the FBI’s inception, its principal legal constraint has been the Attorney General Guidelines that are subject to revision under each new administration.<sup>213</sup> Following the Church Committee Final Report of 1976 which proposed a “comprehensive legislative charter defining and controlling the domestic security activities of the Federal Government,” Congress considered enacting charter legislation setting ground rules for domestic intelligence operations

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<sup>208</sup> Support Daniel, <http://www.supportdaniel.org>.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> Will Potter, *Daniel McGowan Sentenced to 20 Years in Prisons as “Terrorist,”* GREENISTHENEWR.COM, May 9, 2008, <http://www.greenisthenewred.com/blog/mcdavid-sentenced/434/>.

<sup>212</sup> *Id.*

<sup>213</sup> Federal Bureau of Investigations, Special Report, *The Federal Bureau of Investigations Compliance With the Attorney General’s Investigative Guidelines*, Chap. 2 Sept. 2005, available at <http://www.justice.gov/oig/special/0509/chapter2.htm>.

that would safeguard First Amendment rights as a response to public criticism resulting from COINTELPRO's exposure.<sup>214</sup> Establishing a statutory charter would have codified the FBI's responsibilities and authority and established an organizational structure that could not be changed easily through an attorney general's or president's revised guidelines or executive orders.<sup>215</sup>

However passage of such a statute was halted when in 1976 Attorney General Edward Levi enacted new, more restrictive guidelines (Levi Guidelines) for "domestic security investigations" while testifying before Congress that the reforms "proceed from the proposition that government monitoring of individuals and groups because they hold unpopular or controversial political views is intolerable in our society."<sup>216</sup> The Levi Guidelines established undercover criminal investigations as the "model of legitimate covert activity" as well as the starting point of domestic intelligence operations standards due to public fears regarding covert operations focused on domestic intelligence investigations, not criminal probes.<sup>217</sup> Under the Levi Guidelines, investigations could only be brought when "specific and articulable facts" indicated criminal activity,<sup>218</sup> investigations based on speech activities without the advocacy of violence were prohibited, and domestic intelligence operations were restricted to the investigation of individuals or groups who violate civil rights or seek to interfere with or overthrow the government through activities that "involve or will involve the violation of federal law" as well as "the use of force or violence."<sup>219</sup> However, subsequent administrations gradually

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> Electronic Privacy Information Center, Attorney General Guidelines, <http://epic.org/privacy/fbi/> (hereinafter 'EPIC Guidelines').

<sup>219</sup> *Id.*

relaxed the demand for evidence of impending criminal wrongdoing before a domestic security investigation could be initiated.

In 1981, President Ronald Regan's Executive Order 12333 reauthorized many of the domestic intelligence techniques formally prohibited under the Levi Guidelines<sup>220</sup> shortly followed by Executive Order 12345 giving the Bureau and other intelligence agencies "legal authority" to withhold information concerning their employment of counterintelligence methods against U.S. citizens.<sup>221</sup> Protections were further weakened under the next set of Attorney General's Guidelines under Attorney General William French Smith (Smith Guidelines). Under the Smith Guidelines, a full investigation could be brought when information points to a "reasonable indication" of criminal activity.<sup>222</sup> Smith's Guidelines also created "limited preliminary inquiries," a type of investigation that allows all types of police techniques except for wiretapping, mail opening, and mail covers and officially sanctions government infiltration "for the purpose of influencing the activity of" domestic political organizations when such activity is "undertaken on behalf of the FBI in the course of a lawful investigation."<sup>223</sup> In 2006, passage of the Antiterrorism and Effective Death Penalty Act (AEDPA) authorized the targeting of individuals and groups, not on the basis of acts they have allegedly committed, but on their "association" with other groups or individuals.<sup>224</sup> Activities otherwise considered entirely legal are criminalized to the extent that they can be shown to have been undertaken in behalf of groups with a "terrorist orientation."<sup>225</sup>

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<sup>220</sup> WARD CHURCHILL, *Preface* to WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DOMESTIC DISSENT* xlviii (South End Press 2002) (1990).

<sup>221</sup> *Id.* at xlviii-il.

<sup>222</sup> EPIC Guidelines.

<sup>223</sup> *Id.*

<sup>224</sup> WARD CHURCHILL, *Preface*.

<sup>225</sup> *Id.*

The scope of permissible investigative intelligence techniques was additionally expanded following September 11, 2001 by Attorney General John Ashcroft (Ashcroft Guidelines). The Ashcroft Guidelines authorize FBI agents to visit public places and attend public events to gather information on individuals and organizations without any indication of possible criminal wrongdoing as required by earlier guidelines.<sup>226</sup> The changes to the guidelines also allowed FBI agents to use private-sector databases and engage in searches and monitoring of chat rooms, bulletin boards, and websites without evidence possible of criminal wrongdoing.<sup>227</sup> Under current guidelines, the FBI is allowed to go anywhere the public can go to obtain information.<sup>228</sup> While the idea that intelligence agencies should be permitted access to the same places as the general public is not initially alarming, this granting of broad access has the effect of chilling citizens' behavior as even the most law-abiding of citizens are likely to alter their behavior under the looming threat of governmental surveillance.

While much information concerning the surveillance of environmental and animal rights activists has yet to become available, FBI Deputy Assistant Director John Lewis has testified that the FBI employs its "expertise in the area of communication analysis to provide investigative direction" for "ecoterrorism" investigations.<sup>229</sup> However, the only challenge to the government's surveillance of environmental and animal rights activists thus far occurred early during the "Operation Backfire" proceedings when defense attorneys filed a request for information regarding to what extent, if any, the case against the defendants relied on information obtained

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<sup>226</sup> EPIC Guidelines.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Alan Pittman, *Boom! Who Are the Real Terrorists?*, Eugene Weekly, March 3, 2006, <http://www.eugeneweekly.com/2006/03/09/coverstory.html>.

from electronic surveillance.<sup>230</sup> After being ordered to provide the information by a judge, the prosecution offered the defense a plea deal with the stipulation that the defense would withdraw their request for the information.<sup>231</sup> This plea-bargain was agreed to and the request was withdrawn leaving the question of whether the intelligence leading to the defendants' indictments was obtained illegally unanswered.<sup>232</sup>

The most significant evidence of the governmental surveillance of environmental and animal rights activists was revealed during the prosecution of Eric McDavid whose arrest and conspiracy charge was the direct result of a government informant known only as "Anna."<sup>233</sup> "Anna" spent a year and a half with McDavid and his co-defendants and received \$65,000 for her work from the FBI who granted her "authority to participate in Tier 1 Otherwise Illegal Activity" as part of the investigations based on her prior accurate and reliable information in at least twelve prior investigations.<sup>234</sup> In addition to the money, the FBI also supplied "Anna" with a vehicle to drive McDavid's co-defendants across the country to meet up with him, additional gas and food money, a cabin in the woods for "Anna" and the co-defendants to meet, as well as bomb-making recipes and materials.<sup>235</sup>

Though McDavid's defense did not legally challenge the use of an informant generally, they did bring legal challenge against the FBI's use of "Anna" to entrap McDavid and his co-defendants. Whether or not "Anna" acted in a manner sufficient to entrap McDavid was a major source of controversy during trial as in order for a conspiracy charge to stand prosecutors needed

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<sup>230</sup> Dan Berger, *Testing the Limits of Dissent and Repression in the Green Scare*, Z Magazine (2006), available at <http://www.supportdaniel.org/media/berger.html>.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> Cosmo Garvin, *Conspiracy of Dunces*, SACRAMENTO NEWS & REVIEW, July 27, 2006, <http://www.newsreview.com/sacramento/content?oid=80311>.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

to show that McDavid conspired with at least one other person to engage in criminal activity.<sup>236</sup> Since both of McDavid's co-defendants testified that there was no conspiracy among the three of them to carry out any illegal action that left just McDavid and "Anna," a paid FBI informant.<sup>237</sup> In arguing for an entrapment defense, McDavid's defense attorney argued that without "Anna's" planning, constant prodding and encouragement, as well as the supply of crucial money, shelter, transportation, and knowledge, including explosive recipes and materials, a conspiracy would have been impossible.<sup>238</sup> However, two jurors from McDavid's trial have stated under penalty of perjury that jurors were given written instructions that "Anna" was not a government agent during deliberations despite their receiving prior oral statement to the contrary.<sup>239</sup> This written declaration, combined with the jurors' confusion as to what evidence they were allowed to consider for entrapment and what the legal instructions were, led to a reversal of the jury's 7-5 vote to consider McDavid's entrapment defense and ultimately resulted in a guilty verdict.<sup>240</sup>

Though "Anna" was the most significant evidence of the governmental surveillance of environmental and animal rights activists, it is not the only instance. In the spring of 2008, Minneapolis college student Paul Carroll was approached by the Joint Terrorism Task Force and recruited to become a paid informant in the Twin Cities.<sup>241</sup> Carroll was told that his personality and appearance were perfect matches for infiltrating vegan potluck and was offered compensation if he assisted in someone's arrest.<sup>242</sup> Additionally, in preparation for their 2008 ToxExpo in Seattle, the Society for Toxicology commissioned a private firm, Information

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<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> Andrea Todd, *True Believers*, ELLE, May 2006.

<sup>240</sup> *Id.*

<sup>241</sup> Matt Synders, *Moles Wanted*, MINNEAPOLIS NEWS (May 15, 2008), <http://www.citypages.com/2008-05-21/news/moles-wanted>.

<sup>242</sup> *Id.*

Network Associates, to do a “threat analysis and intelligence briefing on the area.”<sup>243</sup> Part of this report’s “preparation and risk mitigation” included a section “Activists of Interest in the Seattle-Area” which further included a report on who activists were dating.<sup>244</sup>

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<sup>243</sup> Will Potter, *Corporations Track Who Activists Are Dating*.

<sup>244</sup> *Id.*

### **3.0 THE IMPORTANCE OF THE DISTINCTION: DOES IT REALLY MATTER?**

So why do these distinctions matter for those currently involved with environmental and animal rights activism? An awareness and understanding of the significant distinctions as well as the remaining similarities between the past targeting of social movements and the targeting of the environmental and animal rights movements today by current activists is crucial for such activists to be able to best protect themselves and their movements while also remaining effective as activists. This is because the evolution of the methods used to target social movements as well as the expansion of the players behind such targeting necessitates similar adaptations in the responses of activists and movements to better reflect the new challenges posed. Unlike the secretive and illegal governmental methods in the past, current targeting of environmental and animal rights activists is largely driven by industry groups and conducted in the public eye through the legal system. As such, current environmental and animal rights activists cannot rely on the exposure of the targeting of their movements or its illegal nature to lead to its discontinuance nor can they exert their own political power to influence all of the players behind their targeting.

It is worth noting that present day environmental and animal rights activists' allusions to and claims of continuing COINTELPRO-style are not completely baseless though they are incomplete. As noted in the Church Committee's report, "[i]f COINTELPRO had been a short-lived aberration, the thorny problems of motivation, techniques, and control presented might be



safely relegated to history. However, COINTELPRO existed for years on an 'ad hoc' basis before the formal programs were instituted, and more significantly, COINTELPRO-type activities may continue today under the rubric of 'investigation.'”<sup>245</sup> The Church Committee’s concerns were supported by the Federal Bureau of Investigation’s reservation of its right to continue to engage in COINTELPRO activities on a case-by-case basis "with tight procedures to insure absolute secrecy" and their emphasis that the program was only terminated due to “security reasons because of their sensitivity” in order “to afford additional security to our sensitive techniques and operations.”<sup>246</sup>

However, according to even official Bureau documents, COINTELPRO “only encompass[ed] everything that has been done or will be done in the future.”<sup>247</sup> This admission is compatible with American history. The government’s targeting of social movements deemed subversive occurred long before the creation of COINTELPRO and, as evidenced by the environmental and animal rights movements among many others, has continued since its termination. Rather than viewing the COINTELPRO period as the starting and stopping point of such activity, it should be viewed as what it truly was – a significant phase in the development of the government’s targeting of activist groups that has since been revised and expanded in order to become more effective.

In this respect, environmental and animal rights activists’ allegations of the continuation of COINTELPRO is true on the claim’s most basic level – environmental and animal rights activists are being heavily targeted by the government in order to suppress their movements at all levels. Just as activists of the 1950’s and 60’s were the subjects of the FBI’s focus under the

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<sup>245</sup> CHURCH COMMITTEE, BOOK II.

<sup>246</sup> Brennan Letter, 4/27/1972.

<sup>247</sup> CHURCH COMMITTEE, BOOK II.

COINTELPRO program, environmental and animal rights activists are similarly now the subjects of one of the FBI's major domestic programs though it lacks a distinctive acronym.<sup>248</sup> This is publically acknowledged by the governmental through press releases and press conferences proclaiming such activists to be the number one domestic terrorism threat and among types of highest domestic terrorism priorities in the nation.<sup>249</sup>

Recognition of our country's long history of the governmental targeting of activists and their movements is important for modern day environmental and animal rights activists to equip themselves to most effectively protect themselves and their movements while also remaining effective as activists. Modern activists should know their history as well understand their place in the broader historical continuum of the suppression of social movements. Environmental and animal rights activists should further take steps to educate themselves about the successes and failures of prior social movements' responses to their targeting and use that knowledge while crafting their own responses when applicable. Furthermore, by realizing that almost all social movements throughout history have fallen under the government's magnifying glass and suffered repercussions as a result, current environmental and animal rights activists can better weigh the costs and benefits of engaging in different types of behavior and decide for themselves what methods would be most effective to meet their goals.

More encouragingly in this respect, current activists can take solace in the fact that social movements throughout history were also painted as extremists and subject to intense measures to suppress their movements. While the successes of such movements were undoubtedly negatively affected by the government's attempts at thwarting them, the movements themselves were never

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<sup>248</sup> Rosenburgh, *The "Case" Against Ron Coronado*.

<sup>249</sup> 2002 Congressional Hearing (statement of James F. Jarboe, Domestic Terrorism Section Chief, FBI Counterterrorism Div.).

completely destroyed and were able to make significant gains despite the difficulties they faced. While criticisms of the largely consumer-driven “go green” fad are valid, environmental and animal rights activists can take some comfort in the fact that, despite being painted as extremists and prosecuted as terrorists, despite legislation such as the Animal Enterprise Terrorism Act, and despite infiltration of their potlucks, environmental conservation and sustainability efforts are becoming more and more mainstream while vegetarianism and veganism are also on the rise.

However, despite broad similarities between the two eras, significant differences between the prior targeting of social movements during COINTELPRO and the current targeting of environmental and animal rights activists necessitate very different responses from today’s activists. Though today’s environmental and animal rights movements have also been subject to measures meant to “expose, disrupt, misdirect, discredit, or other neutralize [their] activities,” these measures take very different forms than during the COINTELPRO years both in terms of the methods employed as well as the players behind them.<sup>250</sup> These changes in methods and the players behind them pose new challenges for today’s activists necessitating a similar change in their responses.

One of the most significant differences between the past targeting of social movements and the targeting of the environmental and animal rights movements today is the secretive nature of COINTELPRO operations compared with very public nature of today’s targeting of environmental and animal rights activists. Former COINTELPRO tactics against activists and movements were focused on undercover covert operations such as the planting and spreading of false information while even COINTELPRO itself was a highly secretive program whose

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<sup>250</sup> FBI Letter, 8/25/67.

termination resulted solely from the surfacing of its paper trail.<sup>251</sup> This is not the case today when, unlike during the COINTELPRO-era, the targeting of environmental and animal rights activists is loudly proclaimed by the federal government, industry groups, and the mainstream media alike during congressional hearings, courtroom proceedings, and press releases and conferences. This public targeting of environmental and animal rights activists is then further publically reinforced with full-page advertisements in major newspapers, flyers distribution at industry conventions, and in movie and television plots portraying such activists as terrorists.

While awareness of their own targeting that results from its public nature is advantageous in that it allows targeted activists to know what they're up against, the public nature of the current targeting of environmental and animal rights activists also strips such activists of their most effective strategies for aiding in its discontinuance – its exposure. Unlike activists of the COINTELPRO-era, current activists cannot rely the exposure their targeting or the resulting public backlash from such exposure as a means of influencing the government to cease the targeting their movements as such information is already publically available. Furthermore, the very public nature of the targeting of environmental and animal activists also has the effect of legitimizing it in the eyes of the public. One reason that society is uncomfortable with secret programs such as COINTELPRO is that their secretive nature gives citizens pause as to why the programs are kept hidden and shielded from public scrutiny. By proclaiming and conducting the targeting of environmental and animal rights activists publically, those behind it give off the impression that their actions are solidly justified and easily able to withstand scrutiny.

However, it does not necessarily follow that current environmental and animal rights activists should all together abandon the strategy of educating society about the targeting of their

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<sup>251</sup> CHURCH COMMITTEE REPORT, BOOK II; Brennan Letter, 4/27/1971.

movements. Rather than giving up of this method completely, current activists should instead adapt it in response to the changing nature of their movements' targeting and try a slightly different approach. Instead of simply repeating what the public already knows, that environmental and animal rights activists are the subjects of one of the federal government's major domestic terrorism programs, current activists should instead focus on why their targeting is misguided and attempt to sway public opinion in that respect. In this respect, current environmental and animal rights activists could even attempt to use the pervasiveness of their public targeting to undermine it by pointing out the lack of justification for such expansive public measures.

Current environmental and animal rights activists must also remember that COINTELPRO's eventual downfall resulted from disapproval of the program's extralegal and illegal nature. The inquiry into COINTELPRO arose from "allegations of substantial wrongdoing by intelligence agencies on behalf of the administration which they served"<sup>252</sup> while the focus of congressional investigation into COINTELPRO was limited to "the extent, if any, to which illegal, improper, or unethical activities were engaged in by any agency of the Federal Government."<sup>253</sup> This is not the case today when, rather than being targeted through illegal or extralegal methods, current environmental and animal rights activists are largely being targeted through the legal system under targeted legislation and domestic terrorism enhancement statutes using methods explicitly authorized by statute or guidelines.

Due to the legal nature of their targeting, current environmental and animal rights activists cannot rely on exposing its illegality as a means of bringing about its termination. However, rather than completely abandoning the strategy of challenging their targeting through

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<sup>252</sup> CHURCH COMMITTEE REPORT, BOOK II.

<sup>253</sup> *Id.*

the legal system, current activists should again adapt their responses to the changing nature of the targeting of their movements. In this regard, just because the currently employed methods of targeting environmental and animal rights activists are legal does not necessarily mean that they are constitutional. Constitutional challenges, especially on first amendment grounds, are available for current environmental and animal rights movements to utilize in attempting to repeal the statutes under which they are charged, prosecuted and sentenced. Furthermore, though the statutes and broad methods under which current activists are targeted may currently be legal, individual incidents occurring under them may often still violate, break, bend, or circumvent existing law. These digressions should be brought before the public and legally challenged as they occur. Though the public branding of environmental and animal rights activists as terrorists may cause a blind eye to initially be turned to these transgressions by both the legal system as well as the public, current activists should continue to document and challenge them in hopes of acquiring a critical mass of complaints that may not so easily be ignored.

Current environmental and animal rights activists should also be conscious of the new players behind their targeting. While COINTELPRO operations were expansive, they were solely a governmental endeavor that was tightly planned, implemented, and controlled by the Federal Bureau of Investigations. This is not the case today as industry groups throw significant weight into drafting and lobbying for legislation specifically targeting environmental and animal rights activists as well as engaging in public relations and media campaigns to paint such activists as terrorists. The role and influence of industry groups in the targeting of environmental and animal rights activists important because while activists can on some level attempt to influence the actions of their government and their elected officials through their own lobbying, testimony at hearings, lawsuits, and votes, industry groups are not similarly accountable to the

public and are thus less responsive to citizens' concerns. Since most current environmental and animal rights activists are already actively boycotting such industries through their own dietary choices and purchasing power, other responses by current activists could include closely monitoring, documenting, and publicizing the influence of industry groups in the targeting of their movements as well as exerting their own more limited lobbying power to the extent possible to counteract the attempts of industry groups further target their movements.

Finally, though current environmental and animal rights activists must take measures to protect themselves and their movements, they must do so while also remaining effective as activists. Adapting to and countering the new challenges posed by the public, legal, and industry-backed nature of their targeting requires significant time, energy and resources; however, such activists should not allow these efforts to overshadow their working towards the original goals of their movements – the protection of the environment and the humane treatment of nonhuman animals. Due to the tendency for movements' already scarce resources to be unintentionally diverted from accomplishing the movements' original goals to external legal battles and protective measures, current activists must be extremely careful to guard against this tendency to lose sight of their original goals. Without reserving the time, energy, and resources to work towards the very reasons that activists engage in environmental and animal rights activism in the first place, such movements will be internally neutralized by fighting against external attempts to the same end.

## APPENDIX A

### “ECO-TERRORIST” ADVERTISEMENTS

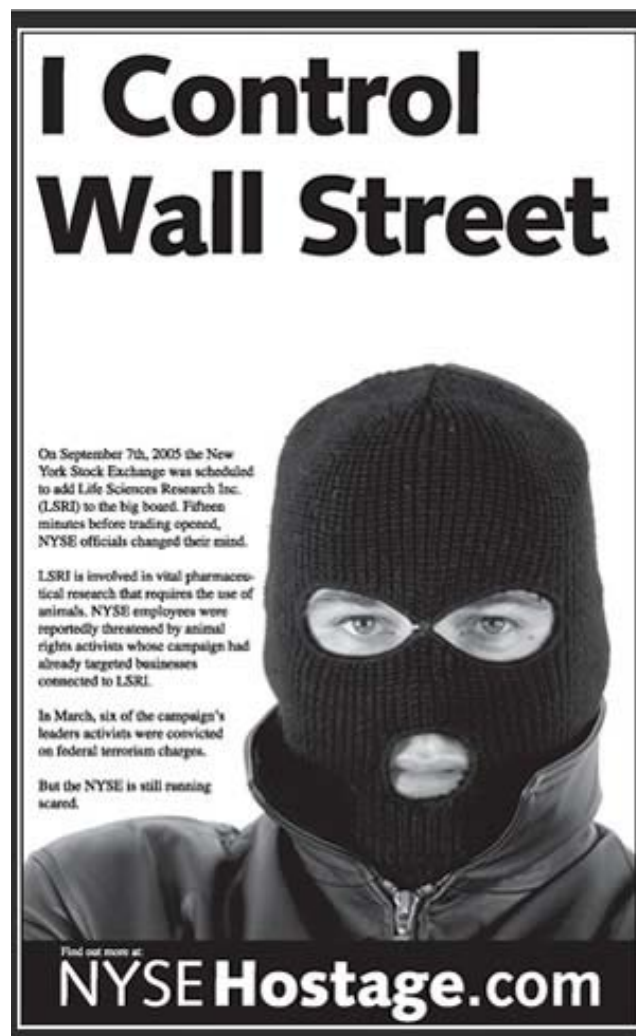


Figure 1. Anonymous, Advertisement, N.Y. TIMES, April 28, 2006.





**Figure 2.** National Association for Biomedical Research, Flyer, 2007 BIO Conference.



**Figure 3.** National Association for Biomedical Research, Advertisement, ROLL CALL, September 2005.

# Why is the Humane Society of the United States Helping a Terrorist Group Raise Money?

On Saturday, a Humane Society of the United States vice president will deliver a keynote speech at a fundraiser for an animal-rights terrorist group.

The Humane Society of the United States claims to oppose violence in the name of animal rights. But on Saturday it's helping raise money for the Humane League of Philadelphia, an organization allied with a vicious, violent gang of convicted animal rights terrorists.

The Humane League of Philadelphia was founded as "SHAC Philly," a chapter of Stop Huntingdon Animal Cruelty (SHAC).

The FBI calls SHAC a "terrorist" group. Its tactics have included death threats, violent assaults, blackmail, and arson.

In 2006, SHAC was convicted on federal terrorism charges. Its national leaders remain in federal prison.



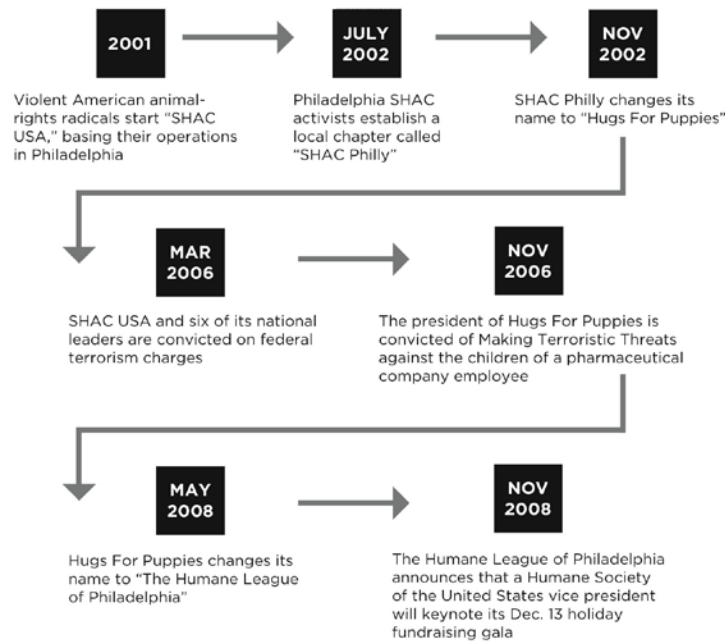
Also in 2006, the Humane League of Philadelphia's president was convicted of Making Terrorist Threats against an employee of a drug company.

According to media reports, he threatened to kill her children.

Judges have issued three different restraining orders against the Humane League of Philadelphia and its president, in order to protect biomedical research companies and their business associates from

violence, vandalism, stalking, and identity theft.

The Humane League of Philadelphia is required by law to post these restraining orders on its own Internet home page.



The Humane Society of the United States claims to be a mainstream, peaceful advocate for animals. Why is it helping a terrorist group raise money?

There's a lot you don't know about the Humane Society of the United States.

**Learn more at [www.HumaneWatch.org](http://www.HumaneWatch.org)**

Figure 4. Center for Consumer Freedom, Advertisement, N.Y. TIMES, Dec, 11, 2008.



Figure 5. Eric Devericks, Editorial, *E.L.F. Members Are Terrorists*, SEATTLE TIMES, March 3, 2008.



Figure 6. *Polluted Minds*, CORKANDFORKUM.COM, August 26, 2003.

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